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ABSTRACT

The purpose of this handbook is to examine the statutory and regulatory requirements of Public Law 94-142, the Education for All Handicapped Children Act, and to outline various administrative responsibilities of local educational agencies relative to the successful implementation of the act. Four specific goals are listed: (1) to inform public school administrators of the statutory and regulatory requirements of the act, (2) to identify critical issues and describe possible problem areas, (3) to describe the effect that the act could have on organizational structure and operations, and (4) to examine the effect that the act could have on administrative decision-making and evaluation of criteria for program effectiveness. Divided into seven chapters, the book discusses some of the following: the history of P.L. 94-142, local educational agency applications for federal funds, the least restrictive environment in which to educate the handicapped, procedural due process requirements, the requirement for individualized education programs, and personnel development requirements. The book concludes that all segments of society, not just the public schools, must change to accommodate the handicapped. (Author/LD)

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Public Law 94-142

Special Education in Transition

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Foreword

With the enactment and full implementation of P.L. 94-142 by the school systems of our nation, the goal of free, universal education for all children will reach historic proportions. As a result of this congressional act, there will be a greater percentage of eligible youth attending and being served by America's school systems than at any time in the past.

AASA enthusiastically endorses this legislation and urges school administrators to take a leadership role in its implementation. Administrators have the opportunity to demonstrate their concern for those special youngsters who need the help that only education and educators can provide.

AASA commends this book to its members and to all administrators. It provides a solid understanding of the needs of handicapped youngsters and a thorough review of the provisions of the new public law. AASA urges administrators to read this book carefully, to seek additional information and to implement the law not only to the letter but in the spirit in which it was written.

AASA expresses its appreciation to the U.S. Office of Education for the grant to publish this handbook, and to the authors, Don R. Barbacovi and Richard W. Clelland. Additional thanks go to AASA Associate Directors Effie H. Jones and William E. Henry who managed this contract and handled the technical aspects of publishing this handbook.

Paul B. Salmon
Executive Director
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Introduction

It has been defined as the "quiet revolution."[1] Its goal has been "the right to an education for all American children, and particularly those usually known as the handicapped."[2] Alan Abeson has characterized this revolutionary period as "the era in which the battle cry for public policy advance changed from charitable solicitations to a declaration of rights."[3] The scope of this "quiet revolution" has been extensively examined by Fredrick Weintraub and Alan Abeson. They concluded that "this revolution to establish for the handicapped the same right to an education that already exists for the nonhandicapped has been occurring throughout the nation, in state and local board rooms, state legislative chambers, and, perhaps most importantly, in the nation's courts."[4] The effect of these legislative mandates and judicial decisions on the organizational structure, operation, and professional responsibility for delivery of services within local educational agencies, state departments of education, and state supported institutions has been dramatic. The legislative culmination of this "quiet revolution" occurred on Nov. 29, 1975, when President Ford signed Public Law 94-142, The Education for All Handicapped Children Act. "Representing a major new commitment by the federal government, P.L. 94-142 was regarded by its chief sponsor, Sen. Harrison A. Williams, Jr. (D-N.J.), as the most important education legislation enacted since the Landmark Elementary and Secondary Education Act" of 1965.[5]

The purpose of this handbook is to examine the statutory and regulatory requirements of P.L. 94-142 and to delineate the various dimensions of local educational agency administrative responsibilities relative to the successful implementation of the Education for All Handicapped Children Act. More specifically, the goals of this handbook are fourfold: (a) to inform public school administrators of the statutory and regulatory requirements of P.L. 94-142, (b) to identify critical issues and delineate possible problem areas relative to P.L. 94-142, (c) to describe the effect

that P.L. 94-142 could have on organizational structure and operations, and (d) to examine the effect that P.L. 94-142 could have on administrative decision-making concerning the assessment and evaluation of criteria for program effectiveness and efficiency. To achieve these goals, the handbook is divided into seven chapters. These chapters are:

- *Chapter I, Introduction to Public Law 94-142.* Chapter I emphasizes (a) the historical development of federal legislation and judicial decisions that have affected special education, (b) the historical development of special education's philosophical position relative to the enactment of the Act, and (c) the legislative intent of the Act.
- *Chapter II, Local Educational Agency Applications.* Chapter II emphasizes statutory and regulatory requirements for local educational agency applications for federal funds.
- *Chapter III, The Least Restrictive Environment.* Chapter III emphasizes (a) the constitutional principle of the least restrictive alternative doctrine, and (b) the application of the least restrictive alternative doctrine to the delivery of special education services.
- *Chapter IV, Procedural Due Process Requirements.* Chapter IV emphasizes (a) the judicial development of procedural due process with the handicapped, (b) the application of procedural due process to the education of handicapped children, (c) the statutory and regulatory requirements of P.L. 94-142, (d) the impact of procedural due process upon the identification, assessment, placement, instruction and evaluation process for general and special education, (e) strategies for implementing the statutory and regulatory requirements of P.L. 94-142, and effective procedures to avoid adversary relationships with students and parents.
- *Chapter V, The Individualized Education Program.* Chapter V emphasizes the impact of the IEP upon the identification, assessment, placement, instruction and evaluation process for the delivery of special education services.
- *Chapter VI, Comprehensive System of Personnel Development.* Chapter VI emphasizes (a) statutory and regulatory requirements for personnel development, (b) identification of social forces and client groups to be served, (c) the local educational agency personnel development planning process, and (d) components of the personnel development delivery system.
- *Chapter VII, A Look Into The Future.* Chapter VII identifies possible future trends for the delivery of educational services to handicapped and nonhandicapped students.

This handbook has two major limitations. First, it is not intended to be a comprehensive planning document for the successful implementation of

P.L. 94-142. In examining the statutory and regulatory requirements of the Act and in delineating the administrative responsibilities relative to implementing the Act, the handbook cannot provide a step-by-step sequence of activities to make statutory and regulatory requirements operational. The goals of this handbook will be achieved if the reader is more aware of the various dimensions of the administrative decision-making processes necessary for successful planning.

Second, this handbook does not examine all the possible organizational, structural, and operational changes that may be necessary to implement the Act. While the salient components of P.L. 94-142 are presented, a comprehensive examination of each requirement of the Act is not feasible.

With these two limitations in mind, Chapter I provides a basic introduction to the historical and philosophical development of P.L. 94-142.

Don R. Barbacovi
Richard W. Clelland

Chapter I

Introduction to Public Law 94-142

General and special educators are currently faced with the problem of initiating organizational change in providing for educational services to handicapped students due to two major external social forces: (a) legislative mandates and (b) judicial litigation. Concurrent with these external forces, general and special educators have begun to realize the inadequacies of the organizational structures and service delivery systems provided by many public schools for handicapped individuals. In response to these social forces and professional criticism, proposals for personal accountability for program effectiveness and efficiency have been suggested for special education teachers and administrators, as has legal action for the reform of special education programming.

Research significant to the study of the administrative process in terms of the implications of changing general and special education organizational structure and service delivery objectives is needed. A major goal of this research should be to determine the appropriateness of administrative models which define administration as the initiator of change rather than the maintainer of the status quo. This will require that special education redefine its role as a subsystem from that of an exclusively instructional role, to a combination instructional, internal consultation, and experimental education role. Burrello, Tracy, and Schultz have suggested that this conceptualization will have two major thrusts:

- the determination of services on the basis of experimentation and evaluation as opposed to an unplanned response to a large number of children with special needs, and
- the delivery of services or alternative educational options within the general administrative and management structure of schools as opposed to the continued development of the delivery system within a separate administrative organization or substructure.[1]

1

The search for appropriate alternatives to educational practice demands, first, an examination of these legislative mandates and judicial decisions that have provided the impetus for P.L. 94-142, and, second, an examination of the basic assumptions or premises underlying the functions and expectations of service delivery. Furthermore, the search for alternatives should not only examine issues currently relevant to the administration of general and special education programs, but also those emerging issues that may provide future stimulus for organizational change.

The remaining portion of Chapter I examines:

- the historical legislative enactments and judicial decisions that proceeded P.L. 94-142,
- the legislative intent of the Act, and
- the historical development of special education's philosophical position relative to the enactment of the Act.

Legislative Enactments

The beginnings of special education programs in this country occurred in the 1880's and can be traced to the development of state residential schools for the deaf and blind, public day school classes for the deaf, and numerous programs for the "feeble-minded."[2] Until recently, the federal role, as it pertains to the handicapped, was limited to providing monetary assistance to state and local educational agencies to meet the needs of these specific disability groups. The initial step was taken in 1954 with the passage of P.L. 83-531, the *Cooperative Research Act.* This Act was designed to foster a spirit of cooperation between the federal government and institutions of higher learning and represented a rudimentary awareness by Congress of the need for categorical aid for special education. In 1958, two bills were passed that established categorical support for the education of the handicapped. These bills became P.L. 85-905, *Captioned Films for the Deaf*, and P.L. 85-926, *Training of Professional Personnel. Captioned Films* established a loan service aimed at cultural enrichment and recreation for deaf persons while *Professional Personnel* focused on the training of university level persons in the area of mental retardation who would in turn train teachers. Although these legislative enactments were significant accomplishments, there was a paucity of legislative action until 1963 when P.L. 88-164 was passed. This law, considered an administrative milestone, resulted in the establishment of the Division of Handicapped Children and Youth within the U.S. Office of Education. The Division brought together under one unit all the previous acts and units set up to serve handicapped children. In 1965, with the passage of P.L. 89-10, the *Elementary and Secondary Education Act* (ESEA), the first sizeable commitment by the federal government to support K-12 education was undertaken. The Federal monies, authorized in five Titles, were

designed to lend assistance to local and state education agencies in providing programs and services to "educationally deprived children." In 1966, P.L. 89-750, the *ESEA Amendments of 1966*, created Title VI which established the Bureau of Education for the Handicapped to handle all federal programs designed to meet the needs of the handicapped, and provided categorical funds for the support of approved programs at the local district level.

The 1970's saw a dramatic increase in Congressional attention to the handicapped. Hundreds of bills were introduced that directly affected the handicapped. From January of 1970 to November of 1975, sixty-one bills were passed that directly pertained to the handicapped.[3] Two of the bills were of major importance. With P.L. 93-380, the *Education Amendments of 1974*, Congress authorized massive increases in the grants to the States' section of ESEA Title VI (Part B). More important, the amendments included assurances of an education in the least restrictive environment and of due process procedures for parents and their handicapped children. A year later, on November 29, 1975, President Ford signed into law the *Education For All Handicapped Children Act* (P.L. 94-142). This landmark legislation amends Part B of P.L. 93-380, and commits the Federal government to a level of funding that provides for a free appropriate public education for all handicapped children between the ages of three and twenty-one. Furthermore, P.L. 94-142 is permanent legislation with no expiration date and commits the federal government to a level of funding that should allow state and local education agencies to attain the full educational opportunity goal.

As Federal government financial support for the education of the handicapped has increased, so, too, has state financial support increased. In 1972, Alan Abeson reported that approximately 70% of the states had some form of mandatory legislation. As Sheldon and Sherman have noted, "even though the Supreme Court has ruled that education is not a fundamental right (San Antonio School District v. Rodriguez, 1973) guaranteed by the United States Constitution, a particular state constitution may guarantee this right to its residents."[4] In fact, "several states (i.e., Rhode Island, Wisconsin, North Dakota, Tennessee, Indiana) have recently adopted "zero-reject" education, which provides a statutory basis for the right to an education for all children."[5] In 1975, The Council for Exceptional Children reported that all but two states had adopted some form of mandatory legislation. It is interesting to note that the dramatic increase in mandatory legislation occurred at the same time as two important right to education cases were being adjudicated in the courts.

Judicial Decisions

There are two landmark cases supporting equal protection and due process in the area of the right to education for the handicapped: (a) the

Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (1972), and (b) Mills v. Board of Education of the District of Columbia (1972). In PARC, the state association for retarded children and parents of 14 retarded children brought a class action suit seeking declaratory judgment against the Commonwealth of Pennsylvania's statutes pertaining to the exclusion of retarded children from the state's educational program. Plaintiffs alleged that: (a) "These statutes offend due process because they lack any provision for notice and a hearing before a retarded person is either excluded from a public education or a change is made in his educational assignment within the public system," (b) "the premise of the statute which necessarily assumes that certain retarded children are uneducable and untrainable lacks a rational basis in fact" and therefore violates the equal protection clause of the Fourteenth Amendment, and (c) "because of the Constitution and laws of Pennsylvania guarantee an education to all children," the statutes violated due process "in that they arbitrarily and capriciously deny that given right to retarded children."[6] After an initial complaint was filed, "the parties agreed to certain findings and conclusions and to relief to be provided to the named plaintiffs and to the members of their class."[7] An amended stipulation and consent agreement was approved and ordered into effect by the court. In District Judge Masterson's opinion, order and injunction declaration, he stated that due process required a hearing before retarded children could be denied public education and that the state, "having undertaken to provide public education to some children, could not deny it to retarded children entirely." Such a denial "raised colorable claim with regard to denial of due process and equal protection."[8]

In noting that "plaintiffs' equal protection claims . . . stand on firm ground," the court concluded that,

> All mentally retarded persons are capable of benefitting from a program of education and training; that the greatest number of retarded persons given such education and training, are capable of achieving self-sufficiency and the remaining few, with such education and training are capable of achieving some degree of self-care; that the earlier such education and training begins, the more thoroughly and the more efficiently a mentally retarded person benefits from it and, whether begun early or not, that a mentally retarded person can benefit at any point in his life and development from a program of education.[9]

Mills v. Board of Education of the District of Columbia (1972) was a civil action brought on behalf of seven children of school age for a declaration of rights and an injunction restraining the Board of Education of the District of Columbia from excluding children who had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive from publicly supported special education.

> The genesis of this case is found (1) in the failure of the District of Columbia to provide publicly supported education and training to plaintiffs and other "exceptional" children, . . . and (2) the excluding, suspending, expelling, reassigning and transferring of "exceptional" children from regular public school classes without affording them due process of law.[10]

The court declared that there was "no genuine issue of material fact" involved in that "Congress has decreed a system of publicly supported education for the children of the District of Columbia." Therefore, "the Board of Education has the responsibility of administering that system in accordance with law and of providing such publicly supported education to all of the children of the District, including . . . 'exceptional' children."[11] In examining the plaintiff's claims to equal protection, Judge Waddy relied on the pronouncements of Circuit Judge Wright in Hobson v. Hansen (1967) in concluding that the Supreme Court

> has found the due process clause of the Fourteenth Amendment elastic enough to embrace . . . the Fifth [Amendment and that] from these considerations the court draws the conclusion that the doctrine of equal educational opportunity — the equal protection clause in its application to public school education — is in its full sweep a component of due process binding on the District under the due process clause of the Fifth Amendment.[12]

"Both the PARC and Mills cases found that total exclusion of handicapped children violates the equal protection clause of the Fourteenth and Fifth Amendments."[13] Furthermore, while the Mills decision concerned several handicapping classes (i.e., behavioral problems, mentally retarded, emotionally, disturbed, hyperactive) PARC extended the range of retarded children to include the severely and profoundly retarded.

To summarize, the judicial impact of the PARC and Mills cases was in deciding that no handicapped class, no matter how severely involved mentally or physically, could be denied equal protection of the law.

Legislative Intent of P.L. 94-142

In the "Statement of Findings and Purpose" section of P.L. 94-142, Congress found that:

- there are more than eight million handicapped children in the United States,
- the special educational needs of such children are not being fully met,
- more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity,
- one million of the handicapped children in the United States are excluded entirely from the public school system and will not go

through the educational process with their peers,

- there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected,
- because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense,
- developoment in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, state and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children,
- state and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children, and
- it is in the national interest that the Federal Government assist state and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

To assure that handicapped children are provided equal protection of the law, Congress enacted P.L. 94-142 with the purpose of assuring "that all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist states and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children."

Special Education's Philosophical Position

Embodied within P.L. 94-142 are a variety of statutory and regulatory requirements that represent the current philosophical position of special educators relative to the civil rights and educational services necessary to appropriately provide full equality of opportunity for handicapped children. Some of these philosophical positions are:

- that handicapped children be guaranteed the same constitutional rights provided all other individuals in our society,
- that these rights include the right of equal protection, the right to procedural and substantive due process, and the right to participation in all educational programs and activities in the least restrictive environment,
- that it is the responsibility of general and special education to meet the educational needs of handicapped children,

- that appropriate educational opportunities for handicapped children be based on identifying, assessing, providing, and evaluating educational services based on the unique needs of each handicapped child,
- that the identifying, assessing, providing, and evaluating of educational services be determined through the use of a systematic planning process,
- that parents of handicapped children and concerned individuals have the right to actively participate in the planning and decision-making process of providing educational services,
- that the importance of appropriate identification, assessment, placement, instruction and evaluation of handicapped children necessitates a prescribed procedural due process system,
- that handicapped children and their parents should be protected concerning the information and data collected by the public schools, and that a prescribed system of confidentiality be guaranteed to all parents and children,
- that to the maximum extent appropriate, handicapped children should be educated with children who are not handicapped, and that removal of handicapped children from the regular education environment should occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily,
- that professional and legal requirements are necessary to insure that children are not misclassified or unnecessarily labeled as being handicapped because of inappropriate selection, administration, or interpretation of evaluation materials,
- that tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient, and
- that information from sources other than ability or achievement tests, including information concerning physical condition, sociocultural background, and adaptive behavior in home and school, is gathered and considered and weight given to each of these sources for placement purposes.

In summary, legislative mandates and judicial litigation, in concert with the current philosophical position of special educators, is providing impetus for examining the administrative process in terms of the implications of changing general and special education organizational structure and service delivery objectives. Five basic issue areas are discussed in the remaining chapters. These are:

(a) local educational agency application,
(b) least restrictive environment,
(c) procedural due process requirements,
(d) individualized educational program, and
(e) comprehensive system of personnel development.

Chapter II

Local Education Agency Application

P.L. 94-142 can, and indeed should, provide educators with a process that will help to create outcomes for handicapped children that have been sought after for years. This process is embodied in Section 614 (a) of the Act, *Local Education Agency Applications*, which requires that any local or intermediate education agency that desires to receive payments under Part B shall submit an application to its State Educational Agency.

The planning process that precedes each district's application is of critical importance. If the old cliche, that "change is inevitable" is still appropriate, then it is relatively safe to assume that some change will take place in the organizational structure, attitudinal characteristics and instructional processes of the educational agency applying for funds. This change can be reactive, where the educational system simply reacts to the changes that are occurring, or it can be proactive, where the educational agency anticipates change and becomes accountable for both the process and product of providing a free appropriate public education to all handicapped children. The local educational agency application (at times referred to as plan) must be thought of as a management information system, a document that ". . . may be conceived of as a problem-solving process that includes planning, designing, implementation, control, evaluation and revision . . .."[1]

Although the process the local educational agency follows in developing the plan is significant, the key to the plan's success lies in the people involved in the plan's development and implementation. It would be appropriate that, in developing the local plan, a group representing those segments of the school system that will be affected by the plan should be involved in its development. These persons could include: (a) parents of handicapped children, (b) parents of non-handicapped children, (c) teacher representatives (regular and special), (d) a principal, (e) other

community agencies, (f) special education personnel, and (g) the director of special education.

Kaufman suggests that prior to any planning process one needs to know what to plan for.[2] This can be accomplished by conducting a needs assessment of the total delivery system, both regular and special. In developing a needs assessment, one must look at what P.L. 94-142 requires of a local educational agency, what additional information the state may require, and what the applicant district would like to include in its plan. When this needs assessment is completed, the educational agency will have a discrepancy model, or an idea of where they are now and where the local district needs to be by September 1, 1978.

The regulations to implement Section 614(a) of the Act are divided into:

- Paragraph 121a.180 to 121a.194, which set out the requirements for submission of applications, state educational agency responsibility, excess costs, requirements for consolidated applications and requirements relating to with-holding of funds, and
- Paragraph 121a.220 to 121a.240, which describe the contents of the local application.

In order to receive funds under this Act a local educational agency *must* submit an application to the state educational agency. A local district *is not* required to submit an application and, therefore, would not be bound by the provisions of P.L. 94-142. However, a local district would be required to provide all handicapped children with a free appropriate public education under Section 504 of the Rehabilitation Act of 1973 which concerns nondiscrimination on the basis of handicap. Consequently, compliance with P.L. 94-142 is expected whether or not the local district receives federal funding.

It is the state educational agency's responsibility to establish procedures which the local agency will use to prepare its application. This local plan will be similar to a grant application in that the local district must delineate what they plan to do with the Part B money; however, the local agency need not include a budget section. (The state could ask the local agency for that information.) The state plan for fiscal 1978 should be turned into the Commissioner of Education no later than June 30, 1977, and for each succeeding year the state educational agency application should be submitted by June 30. In order to comply with the public participation provisions in the Act, the state educational agency must have its plan ready for public inspection prior to June 30. Each state plan must include:

- assurances of public hearings,
- how people were notified regarding those hearings,
- a summary of comments received and a description of modifications made in the state plan resulting from those hearings, and
- a statement describing the method by which the state plan will be

made available to the public after approval by the U.S. Commissioner of Education.

Prior to the state's approval of any local application, the state's annual program plan (which is similar to the local educational agency's application) must be approved by the Commissioner. When the state's annual program plan is approved, the state in turn can approve local district plans. In order for a local district to receive funds on a timely basis, the local application would need to be approved prior to fall start-up. This would compel local districts to have their plans ready in the spring of the year for two reasons. First, to give adequate time to the states to review the documents and, second, to give adequate time for local districts to gain input from instructional staff.

A state may *require* a local educational agency to submit a consolidated application if: (1) in fiscal 1979 the local educational agency's entitlement is less than $7,500, or (2) the agency is unable to establish and maintain programs of sufficient size and scope (defined by the state) to meet the needs of handicapped children. The basic intent of this section of the Act is to require those districts who cannot provide adequate or cost effective services to handicapped children to consolidate services with similarly situated districts.

Each local educational agency must retain records which show that funds provided under the Act are used solely for the *excess costs* of special education and related services for handicapped children. This provision of the Act is intended to assure that all handicapped children (receiving a free appropriate public education) are guaranteed the basic funding provided all children within a local educational agency and to ensure that B funds are used to supplement, not supplant, state and local funds. Paragraph 121a.230 states that "each application must provide assurance satisfactory to the state educational agency that the local educational agency uses funds provided under Part B to supplement . . . and in no case supplant . . . state and local funds."

The remainder of this chapter focuses on the content requirements of the local educational agency application. These requirements include: (a) child identification, (b) confidentiality, (c) full educational opportunity goal, (d) facilities, personnel and services, (e) priorities, (f) parental involvement and public participation, and (g) funding provisions.

Child Identification

The regulations for P.L. 94-142 state that all local agencies must include procedures which insure that all children residing within their jurisdiction who are handicapped, regardless of the severity of that handicap, "are identified, located, and evaluated, including children in all public and private agencies within that jurisdiction." A method of complying with this regulation is to employ a child-find coordinator and develop a

child find system capable of locating, evaluating and placing a handicapped child. To be in compliance (a) all handicapped children ages 3 to 18 must have available to them a free appropriate public education by September 1, 1978, and (b) all handicapped children ages 3 to 21 by September 1, 1980. However, children in the 3 to 5 and 18 to 21 categories may not be served if service to these children is inconsistent with state law or practice, or the order of any court.

Confidentiality

The regulations concerning confidentiality were published under P.L. 93-380 and have been renumbered and republished in the regulations to implement P.L. 94-142. The local educational agency's application must ensure that parents' and children's rights are protected with regard to the provisions set out in Paragraph 121a.560 to 121a.574 of the regulations.

The first of these provisions concerns access rights. Specifically, the local educational agency must permit parents to inspect any personably identifiable information which is maintained by the agency. It is incumbent upon the district to permit parental inspection of personably identifiable information no later than 45 days after a request by the parent. However, it is permissible for the district to reserve the right to verify the authority of any individual requesting information, relative to that individual's legal status as parent or guardian. The local district must also maintain records of all individuals granted access to the records (except for parents and authorized personnel) including names, dates and purposes of the information request. The confidentiality regulations permit school districts to charge a fee "for copies of records if the fee does not effectively prevent the parents from exercising their right to inspect and review those records."

The local application must also specify a procedure that affords the parents an opportunity to amend any information which they deem inaccurate. If the local district decides not to amend the existing information they must (a) inform the parent of the refusal and, (b) advise the parent of the right to a hearing. Furthermore, the plan must specify procedures to be used, if as a result of a hearing, the local district decides that the information is inaccurate, misleading, or violates the privacy of the parent or child the district "shall amend the information accordingly and so inform the parent in writing." The local plan must also specify a procedure that would inform parents of their right to place a disagreeing statement in the permanent records of their child for as long as the contested information is maintained by the district. A final assurance the local district must make is that all information no longer needed to provide educational services to a child will be destroyed within 5 years. The district may maintain, without time limits, a student's:

(1) name
(2) address

(3) phone number
(4) grades
(5) attendance records
(6) classes attended
(7) grade level completed, and
(8) year completed.

it is incumbent upon the district to notify parents of their right to a copy of such information collected and maintained, prior to the destruction of that information. This requirement can be met with a mailing to the last known address of the child's parents.

Full Educational Opportunity Goal

The local district application must include a goal of providing full educational opportunity to all handicapped children, and include a detailed timetable for accomplishing this goal. The term full educational opportunity goal is an all encompassing term that: (a) includes all handicapped children 0 to 21, (b) provides for comprehensive planning which includes estimates of the numbers of handicapped children, and (c) *does not* include specific statutory timelines for service but requires each state to set its own timetable. As a part of that goal, "free appropriate public education" requires that a free appropriate public education be available to all handicapped children 3 to 18 by September 1, 1978, and 3 to 21 by September 1, 1980. Consequently, a district (or the state) could be in compliance with the Act without ever achieving its goal. For instance, if a state's mandatory legislation stipulates a free appropriate public education must be available to all handicapped children 3 to 18, then the local educational agency must provide that opportunity. However, the state and local educational agency's *goal* may be to serve all handicapped children 0 to 21, hence, they could be in compliance with the state's law, but never reach the goal of providing service to the 0-2 and 19-21 age groups. With respect to serving handicapped children 3-5 and 18-21:

(a) within statutory time limits, if a state makes available public education to non-handicapped children in these age groups, then it must make an appropriate public education available for the handicapped within these age groups, and
(b) within statutory time limits, if a state makes available a free appropriate public education to a majority of handicapped children in any of these age groups, then it must make available public education to all handicapped children in that age group.

If, however, service to handicapped children ages 3-5 and 18-21 is inconsistent with state law or practice, or the order of any court, service to these age groups is not required. This section of the local plan will draw heavily from the state's annual program plan.

Facilities, Personnel and Services

The kind and number of facilities, personnel and services necessary to meet the full service goals of P.L. 94-142 must be a part of a local educational agency's application. An important distinction to be made lies in the difference between what will be required to meet the mandate as opposed to what is necessary to meet the full service goal. A local district may choose to devise two lists: (a) one describing facilities, personnel and services required to meet the mandate, and (b) another describing facilities, personnel and services necessary to meet the full service goal. In essence, the district would have a discrepancy model.

Priorities

P.L. 94-142 establishes two priorities for the use of Part B funds which include both local and state educational agencies. First priority children are defined as "handicapped children who are not receiving any education." Second priority children are defined as "handicapped children within each disability, with the most severe handicaps who are receiving some but not all of the special education and related services specified in the individualized education programs of those children." The regulation clearly states that *all* Part B money must be utilized to provide direct service to first priority children within the mandated age ranges. Prior to moving to the second priority, a local educational agency application must provide assurances that services are being provided to all first priority children. The local agency can utilize its Part B money to serve the second priority only when it provides satisfactory assurances to the state that:

"(a) all first priority children have a free appropriate public education available to them,
(b) that it has a system for the identification, location, and evaluation of handicapped children and,
(c) that whenever a first priority child is identified, located, and evaluated, the agency will make a free appropriate public education available to the child . . ."

Parent Involvement and Public Participation

A local application must include procedures which ensure consultation with parents of handicapped children regarding the development of "full educational opportunity goals." If parents are involved in the overall planning process, the intent of this section would be met. Each application must also include a procedure specifying how the plan and all related documents will be made available to parents of the handicapped and the general public.

Funding Provisions

Each local application must provide satisfactory assurance to the state

that expenditures (Part B funds) for services and equipment will be made only for the purpose of providing a free appropriate public education to handicapped children. Furthermore, the materials and equipment purchased with the funds will be administered by the local school district.

The local educational agency must also provide assurance to the state that Part B money will be used *only* for the excess costs of special education and related services and, therefore, will not be used to supplant *any* special education costs from other sources including state and local funds. The regulations state that "this assurance is satisfied by the use of a separate accounting system that includes an 'audit trail' of the expenditure of the Part B funds. Separate bank accounts are not required." In addition, the local application must describe how Part B funds will be used during the following school year.

The local application must also include assurances related to: (a) the participation, when appropriate, of handicapped children in regular education programs, (b) the provision of procedural safeguards and, (c) the development and implementation of individualized education programs. These three topics will be discussed in detail in Chapters III, IV and V respectively.

It is evident that the local educational agency application will require many hours to complete. The plan can either be a reactive paper document, completed solely for the purpose of complying with the Act to receive Part B money, or it can be a proactive management plan, which provides a means to achieve a free appropriate public education for all handicapped children.

Chapter III

The Least Restrictive Environment

Public Law 94-142 requires states to establish "procedures to assure that to the maximum extent appropriate, handicapped children, including children in public and private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." Subpart E of the regulations for P.L. 94-142,

- requires each state educational agency to inform public educational agencies about the least restrictive alternate provision, to assist them with its implementation, and to monitor their progress, and
- sets requirements designed to insure effective implementation of the least restrictive alternate provision for each handicapped child.

To understand the least restrictive environment requirements of P.L. 94-142, it is necessary to examine the constitutional principle of the least restrictive alternative doctrine in case law. Just as the constitutional principle of equal protection of the law provides a judicial foundation for the educational concept of equal educational opportunity, the least restrictive alternative doctrine provides a judicial foundation for the educational concept of the least restrictive environment.*

*Noting that the least restrictive alternative doctrine is also a programming principle, Abeson, Bolick, and Hass (1975) have stated that "mainstreaming is the educational term often used to describe this programming principle." For this handbook, the terms least restrictive environment and mainstreaming will be used interchangeably.

The remaining portion of Chapter III examines:

- the constitutional principle of the least restrictive alternative doctrine,
- the regulatory requirements of P.L. 94-142, and
- the application of the least restrictive alternative doctrine to the delivery of special education services.

Least Restrictive Alternative Doctrine

While the least restrictive alternative doctrine has long been part of American jurisprudence, it did not begin to have a serious impact until the Warren Court years. Bastress has observed that,

> the past two decades have witnessed enormous changes in both substantive constitutional law and the courts' approach to constitutional questions. The frequent application of the doctrine of less restrictive alternatives has been a factor in increasing significant proportions in effecting these changes.[1]

Concomitant with the substantive due process principle, the least restrictive alternative doctrine facilitates the regulation of the "breadth" of legislative and administrative enactments. The emergence of this doctrine was predicated on the assumption that "in due process cases, the objective of state legislatures can be achieved by a measure which trenches deeply into the value of liberty or property."[2]

Legal authorities have used a variety of terms to express the least restrictive alternative doctrine. Some of these include:

- the less drastic means,[3]
- the reasonable alternative,[4]
- the less intrusive alternative,[5]
- precision of regulation,[6] and
- necessity[7]

In general, these terms are held to be synonymous in meaning. Bastress' term "least restrictive alternative doctrine" has been employed in both legal and educational writings, and is used for this handbook.

Wormuth and Mirkin generalized the least restrictive alternative doctrine thus:

> Category A consists of actions which constitute a problem with which the legislature has a right to deal. The adjacent category B consists of innocent actions which of themselves threaten no evil. If it is not possible to separate the two, the legislature may sweep in B with A, subjecting both categories to the controls appropriate to A. But if there exist techniques by which the legislature can cope adequately with category A without invading category B, there is no justification for

depriving category B of its constitutional immunity.[8]

Within the context of judicial litigation, the courts have expressed opinions in concert with Wormuth and Mirkin's generalization. As stated in Shelton v. Tucker (1960),

> Even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.[9]

Until recently, the least restrictive alternative doctrine was defined in terms of what was least restrictive to that person injured by the state's action. However, the U.S. Supreme Court has ruled in three recent cases (American Party of Texas v. White, 1974; Lubin v. Panish, 1974; Storer v. Brown, 1974) in which "the Court found a fundamental individual interest, and legitimate and compelling state interests . . . each of [which] turned upon the existence (or non-existence) of alternative means."[10] The decisions reached in each case not only "evidence a concern for the effectiveness of suggested alternatives," but also show a "willingness of the Court to accept an alternative that was less restrictive (for the plaintiff) even though it was clearly not the least restrictive."[11] The significance of this is that in the future, the Supreme Court may be examining a wider range of alternatives that balances both an individual's rights and the state's compelling interests. This examination may try to balance in terms of what is sufficient to both parties, without necessarily being the least restrictive to the individual or the most facilitative to the state.

The least restrictive alternative doctrine has been applied in court cases in which issues relative to equal protection, substantive due process, and procedural due process have been applied. In general, the standard used to test "substantive due process cases has been similar to or identical with . . . tests [used] in equal protection cases."[12] For both substantive due process and equal protection, the "strict scrutiny test" has been employed when a fundamental right implicit in the Fourteenth Amendment is challenged or when a legislative classification is considered suspect. With the strict scrutiny test, the "state must . . . satisfy a three-pronged standard: 1) the means selected are necessary, 2) to further a compelling interest, 3) aimed at a legitimate goal. As the requirement of necessity indicates, available alternatives must be investigated in every case applying this strict review."[13]

In summary, the least restrictive alternative doctrine provides a judicial foundation to administrative decision-making which requires that official actions (such as educational placement) must not, without appropriate examination of alternate actions, unnecessarily exceed or infringe upon the rights of an individual.

Regulatory Requirements for the Least Restrictive Environment

Expanding upon the statutory language in the Education for All Handicapped Children Act, the regulations for P.L. 94-142 require that:

- each state and local educational agency ensure that a continuum of alternative placements are available to meet the needs of handicapped children for special education and related services.
- to the extent necessary to implement an individualized education program for each handicapped child, educational agencies must provide for a continuum of alternative placements including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions,
- each state and local educational agency ensure that each handicapped child's educational placement is determined annually and is based on his or her individualized education programs,
- unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped,
- in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs,
- each state educational agency provide technical assistance and training activities for implementing the least restrictive environment requirements in local districts, and that the state educational agency monitor this implementation.

While mandating that unnecessary and possibly detrimental segregation of handicapped children be eliminated, the Bureau of Education for the Handicapped concurred with the concerns expressed by the House Education and Labor Committee in a June, 1975 House report to Congress.

> The Committee understands the importance of providing educational services to each handicapped child according to his or her individual needs. These needs may entail instruction to be given in varying environments, i.e., hospital, home, school, or institution. The Committee urges that where possible and where most beneficial to the child, special educational services be provided in a classroom situation. An optimal situation, of course, would be one in which the child is placed in a regular classroom. The Committee recognizes that this is not always the most beneficial place of instruction.[14]

In the preamble to the regulation, BEH also raised the issue relative to "the desirability of setting out a specific continuum of educational placements or program options which every state must follow." While requiring that, at a minimum, a continuum of alternate placements include regular

and special classes, special schools, home instruction, and instruction in hospitals and institutions, the decision was made to permit each state to develop and delineate the specific structure of its own continuum.

Applications of the Least Restrictive Alternative Doctrine to the Delivery of Special Education Services

In writing *A Primer on Due Process: Education Decisions for Handicapped Children,* Abeson, Bolick, and Hass examined the application of the least restrictive alternative doctrine to the delivery of special education services. They concluded that,

> The relationship between due process and placement in the least restrictive alternative educational setting is extremely close. Due process establishes the procedures that require the schools to consider all program alternatives and to select that setting which is least restrictive. The basis of this entire concept is the existence of a variety of options or program settings that can be used to provide education to handicapped children depending on their individual needs. Some legal theorists have indicated that a decision to place a handicapped child in any setting other than that used for his non-handicapped peers is inherently restrictive, and consequently, a deprivation of individual liberty, a circumstance which demands due process of law.[15]

Richard Johnson, in discussing the least restrictive alternative doctrine as applied to education, states,

> This doctrine represents, for handicapped children, the right to be educated in the regular class, however defined, unless clear evidence is available that partial or complete removal is necessary. Factors idiosyncratic to school districts (such as organizational arrangements, technological differences in delivery systems, agency jurisdictional problems, and/or lack of adequate local, state, or federal financial support) may not be considered as reasons for abrogating the right of an individual child to the least restrictive alternative necessary to meet his/her unique educational needs.[16]

In providing a conceptual framework for the implementation of the least restrictive environment that encompasses statutory, regulatory, and administrative responsibilities of P.L. 94-142, the following definition by Kaufman, Gottlieb, Agard, and Kukic is appropriate.

> Mainstreaming refers to the temporal, instructional, and social integration of eligible exceptional children with normal peers based on an ongoing, individually determined, educational planning and programming process and requires clarification of responsibility among regular and special education administrative, instructional, and supportive personnel.[17]

Thus, the conceptual framework of the least restrictive environment comprises three major components: (a) integration, (b) educational planning and programming, and (c) clarification of responsibility. Kaufman et.al. delineate these components and their elements schematically in Figure 1.[18]

The first element of the integration component of mainstreaming concerns the amount of time the handicapped child spends with normal peers. "The underlying *assumption* (emphasis added) of temporal integration is that the greater the amount of time the handicapped child spends with normal peers, the more positive will be the social and/or instructional outcomes expected for him."[19]

The second element of the integration component of mainstreaming concerns the extent to which the handicapped child is integrated into the regular classroom instructional environment. Three conditions of compatibility must exist for instructional integration to occur. These conditions are:

(1) compatibility between the child's needs and the learning opportunities that are available in the regular classroom,
(2) compatibility between the handicapped child's learning characteristics and educational needs, and the regular classroom teacher's ability and willingness to modify instructional practices, and
(3) that regular and special education personnel provide the handicapped child with an appropriately coordinated and well articulated educational program.

The third element of the integration component of mainstreaming concerns the social integration of eligible handicapped children and their normal peer group. "This social integration may be described in terms of physical proximity, interactive behavior, assimilation, and acceptance."[20]

In summary, the integration component of Kaufman's et.al. mainstreaming model involves temporal, instructional, and social elements, and the nature of a handicapped child's academic and social needs will greatly influence the appropriate integration opportunities which are provided by these elements. Several instructional hierarchies have been developed that match a handicapped child's educational and social needs with appropriate educational settings. The following instructional hierarchy (Figure 2) developed by Willenberg emphasizes the integration of student needs with program opportunities.[21]

FIGURE 1
Structure of Mainstreaming

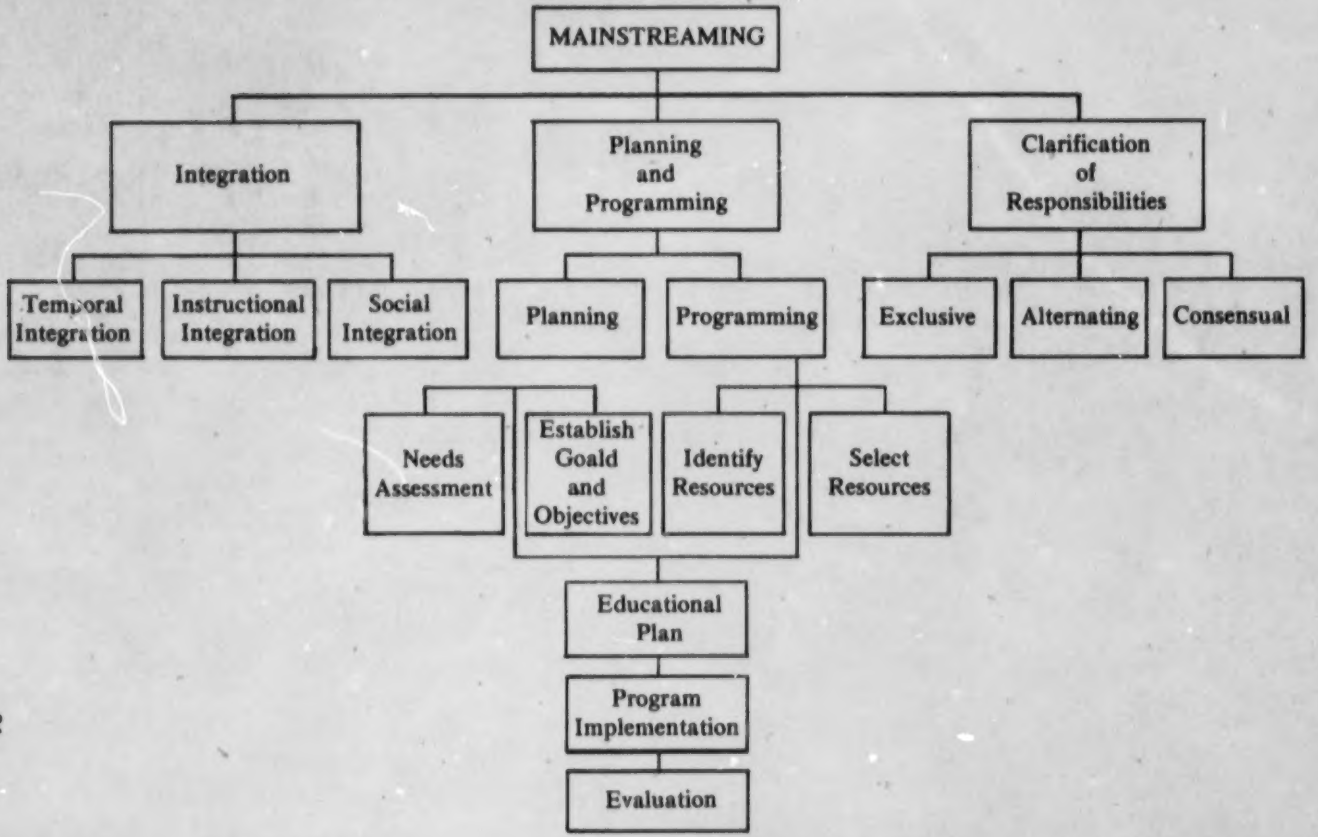
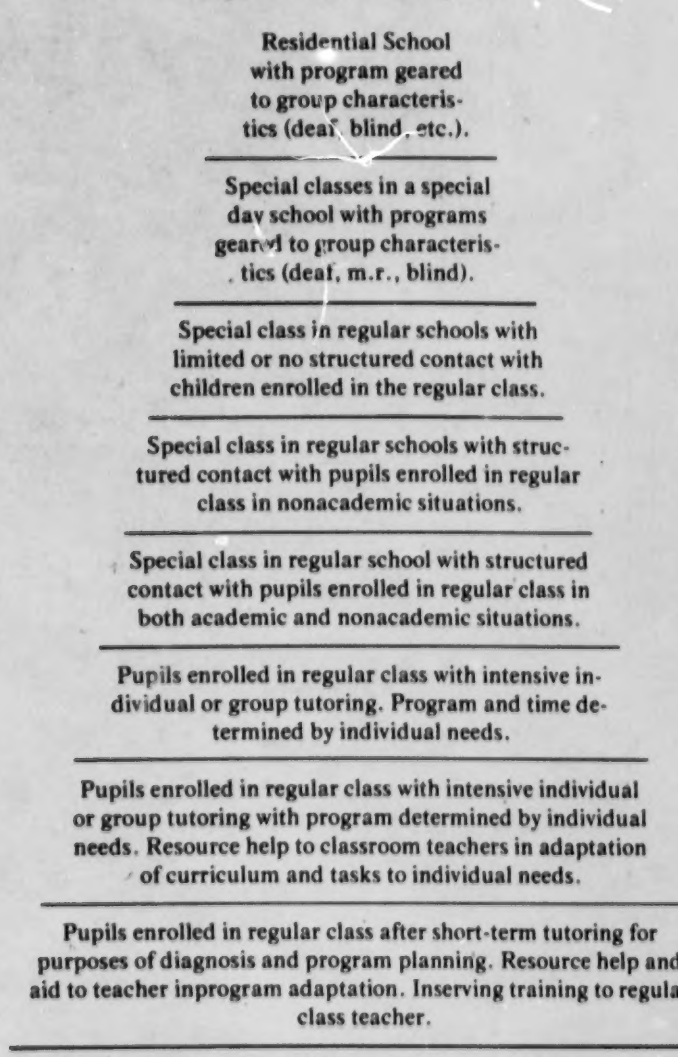


FIGURE 2

Levels of Instructional Intervention Within Public School Special Education Programs


Residential School with program geared to group characteristics (deaf, blind, etc.).
Special classes in a special day school with programs geared to group characteristics (deaf, m.r., blind).
Special class in regular schools with limited or no structured contact with children enrolled in the regular class.
Special class in regular schools with structured contact with pupils enrolled in regular class in nonacademic situations.
Special class in regular school with structured contact with pupils enrolled in regular class in both academic and nonacademic situations.
Pupils enrolled in regular class with intensive individual or group tutoring. Program and time determined by individual needs.
Pupils enrolled in regular class with intensive individual or group tutoring with program determined by individual needs. Resource help to classroom teachers in adaptation of curriculum and tasks to individual needs.
Pupils enrolled in regular class after short-term tutoring for purposes of diagnosis and program planning. Resource help and aid to teacher inprogram adaptation. Inserving training to regular class teacher.
Regular class enrollment with resource help to classroom teacher. Diagnosis and behavior observation is the responsibility of the classroom teacher: Inservice training to regular teacher.

Sharing several basic characteristics with Deno's Cascade System of Special Education Service and Reynold's instructional framework model of service delivery,[22] Willenberg's hierarchy includes the following characteristics:

- while no single pattern suitable for all exceptional children's needs can be outlined for the internal organization of special education in all local school systems, there is ample experience to support the advocacy of various forms of centralized units to provide for the planning, development and coordination of special education,
- the unit for educational service is the individual exceptional child,
- the goal is that child's optimum education and rehabilitation,
- the organizational scheme within the educational system should facilitate flexible programming and attract the child toward progressive levels of independence and self-direction,
- the concept of flexible internal organization can be scaled from a base where the majority of exceptional pupils require minimal modification,
- each successive level above the base represents the need for greater modification in the social milieu of the child and, in many cases, the extent and nature of instruction and other services, and
- the local school system should be structured in such a way as to nurture flexibility in pupil placement practices so that the full resources for special education and rehabilitation can obtain maximum benefits.[23]

The educational planning and programming process of Kaufman's et.al. mainstreaming model involves a "complex interaction between the academic, social, and emotional characteristics of the regular classroom." Administrative decision-making concerning the coordinated planning and programming for appropriate and effective service delivery in the regular classroom is obligatory for meeting the least restrictive environment requirement of P.L. 94-142. Kaufman et.al. describe the educational planning and programming component as,

> An ongoing cyclical process consisting of two elements — planning and programming. Planning refers to the assessment of a child's educational needs and the determination of goals and objectives related to the educational services required by the child. Programming refers to the identification and selection of regular and special education human, fiscal, and material resource alternatives available to provide the educational services required by a handicapped child. The cyclical process requires the synthesis of planning and programming information for developing an educational plan representing the edu-

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cational services and resources allocations determined to be appropriate to meet the child's educational needs.[24]

Implicit in Kaufman's et.al. description of the planning and programming component are:

- assessment of educational needs based on a conceptual frame of reference for considering provision of service delivery,
- goals and objectives formulated in terms of the educational services required to meet the needs of handicapped children,
- identification and selection of general and special education resources, including instructional and supportive personnel, organizational arrangements, facilities, equipment, media, and materials,
- development of an individualized education program which is "the synthesis of the planning elements (educational needs assessment, determination of educational goals and objectives) with the programming elements (identification and selection of resource allocation alternatives)." The individualized education program "represents a written commitment of intent by educational decision-makers regarding the type of educational services and resources to be provided the handicapped child,"[25]
- implementation of the individualized education program which involves the implementation of educational services and commitment of resources consistent with the handicapped child's individualized education program, and
- evaluation of the individualized education program which necessitates an ongoing evaluation in order to assess changes in pupil academic and behavioral performance.

The final component of the Kaufman's et.al. model of mainstreaming is the clarification of responsibilities. "Clarification refers to the delineation and assignment of responsibilities necessary for effecting coordinated planning and programming by regular and special education administrative, instructional, and supportive personnel."[26] In meeting the least restrictive environment requirement of P.L. 94-142, the assignment or assumption of administrative instructional and supportive responsibilities will occur within three basic types of managerial jurisdictions. These types of jurisdictions are:

- exclusive responsibility, which "refers to those situations in which an individual or program has independent jurisdiction,"
- alternating responsibility, which refers to "when to or more individuals or programs have jurisdiction which is exercised interchangeably," and
- consensual responsibility, which refers to "jurisdictional areas which

two or more individuals or programs jointly maintain."[27]

Finally, Kaufman et.al. conclude that,

> Clarification of responsibilities and the nature of their assignment or assumption — exclusive, alternating, or consensual — is critical to the effective implementation of an ongoing individually determined educational planning and programming process. Whereas most educational functions are organizationally delimited to a single line of authority, mainstreaming requires an interfacing of regular and special education administrative, instructional, and supportive services.[28]

In summary, the constitutional principle of the least restrictive alternative doctrine provides a judicial foundation for administrative decision-making relative to the services provided to handicapped children. This constitutional principle, when applied to education, requires that, at a minimum, administrative decisions must be made with consideration for the possible deprivation of liberty any educational placement decision may have on a handicapped child.

Chapter IV

Procedural Due Process

The significance of procedural due process in the education of handicapped children was enunciated by the Bureau of Education for the Handicapped (BEH's) preamble to the proposed regulations for Public Law 94-142.

> A basic tenant of the American system of government as provided by the United States Constitution, is that any individual who is threatened or becomes subject to serious or adverse action by public authorities must be provided with full rights of due process of law. Such procedures provide to the individual the opportunity to contest the proposed action within a series of proceedings which insure that fairness and good judgment govern the entire decision-making process.[1]

Further elaborating on the importance of procedural due process, BEH emphasizes that the implementation of the regulation is,

> to produce a setting in which interested parties . . . understand the nature of a child, his needs, the procedures and process used to obtain that information, the proposed plan to meet the needs of the child, the review procedures to determine program effectiveness and, finally, their rights under the law.

The procedural due process principles mandated by P.L. 94-142 follow in the tradition of the general development of due process safeguards. For a thorough understanding of the legislative intent and the proposed legal requirements relevant to the procedural due process provisions of P.L. 94-142, an examination of the judicial development of the constitutional principle of due process is appropriate. The remaining portion of Chapter V examines:

- the expansion of children's rights,
- the judicial development of procedural due process,

- the application of procedural due process to the education of handicapped children,
- the statutory and regulatory requirements of P.L. 94-142,
- the impact of procedural due process upon organizational objectives and policy formulation in general and special education, and
- strategies for implementing the statutory and regulatory requirements of P.L. 94-142, and effective procedures to avoid adversary relationships with students and parents.

Expansion of Children's Rights

A traditional controversy has centered around the issue of constitutional rights. The questions of to whom they should be accorded, and how broad their coverage ought to be, have occupied the time of numerous courts. The decisions handed down by courts have set precedents for the extension of constitutional rights, including procedural due process, to situations previously excluded from protection. What can be termed a "changing concept of childhood" has developed as a result of the courts acting as policy-makers for educational institutions through the gradual recognition of the constitutional rights of students.

Except under the few circumstances where the state was authorized to intervene in family life under the doctrine of parens patriae, the judicial system has reflected a social consensus that a child's best interests were synonymous with those of the parents.[2] In general, substantive and procedural rights for children as a discrete interest group were not constitutionally guaranteed. However, influenced by the Civil Rights Movement of the last two decades, state and federal courts have been compelled to reexamine the legal status of children in accordance with fundamental constitutional guarantees and privileges. At present, judicial reform is moving to reexamine children's legal status in two ways: (a) by extending more adult rights to children, and (b) by recognizing unique needs and interests of children as legally enforceable rights.[3] The first approach is exemplified by proposals for: (a) extending all the rights of adult criminal defendants to accused delinquents, (b) proposals for empowering children to request medical care without parental consent, and (c) proposals for providing a child with legal representation in situations where certain of his physical and psychological interests are affected.[4] As the primary focus of this handbook, this approach has dramatically modified the legal status of children in relation to the states' authority to regulate: (a) student discipline, (b) education for the handicapped, and (c) classification procedures for special education placement.

"The second approach to children's rights begins with the belief that even if all adult rights were granted to children and were strictly enforced, this would not guarantee that certain critical needs unique to children would be met."[5] In response to these critical needs, several writers have

discussed various "bills of rights" and "needs manifestos" for children.[6] Furthermore, some state courts have tended to broaden their interpretation of children's fundamental rights concerning the allocation of fiscal, material, and personnel resources in meeting various physiological needs (Rodriguez v. San Antonio Independent School District, 1971; Serrano v. Priest, 1971). However, with the exception of cases involving racial discrimination, most state and federal courts have been reluctant to assume the responsibility of allocating resources based on "nebulous concepts" such as "needs" (McInnis v. Shapiro, 1969). This reluctance has been supported by the recognition of the "limited ability of the legal system to prescribe and enforce the quality of social arrangements" for children.[7] As Circuit Judge Albert B. Bryan stated in Burruss v. Wilkerson (1969) concerning the concept of "educational needs," "The courts have neither the knowledge, nor the means, nor the power to tailor the public monies to fit the varying needs of . . . students."[8]

"Although many special claims of rights are far from legal recognition, . . . this does not mean they should be dismissed."[9] The judicial system is not unresponsive to societal values; future decisions may be influenced by changing societal values as well as changing concepts of children's rights. This process of changing societal values as well as changing concepts of children's rights has been succinctly expressed in P.L. 94-142, in which Congress declared that "it is in the national interest that the Federal Government assist state and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law." Adjudication based upon P.L. 94-142 will give initiative in examining the status of children in accordance with fundamental constitutional guarantees and privileges.

For both approaches, four constituent legal principles have provided the impetus for the extension of rights: (a) substantive due process, (b) procedural due process, (c) equal protection, and (d) the least restrictive alternative doctrine. These constituent principles are as applicable to children as adults (Continental Casualty Co. v. Miller, 1940; in re Gault, 1967). As stated in Ciulla v. State (1968), "the 14th Amendment and the Bill of Rights protect minors as well as adults."[10]

Judicial Development of Procedural Due Process

> Its exact boundaries are undefinable and its content varies according to specific factual contexts . . . Whether the Constitution requires that a particular right obtains in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceedings are all considerations.[11]

The preceding definition of due process presents a concept which has a recognizable form, yet maintains a flexibility in its application to particu-

lar situations. The Constitution provides for due process in the wording of the Fifth Amendment:

> No person shall . . . be deprived of life, liberty, or property without due process of law.

Similarly, the Fourteenth Amendment states:

> . . . nor shall any State deprive any person of life, liberty, or property without due process of law.

A prescribed constitutional procedure must be followed if an individual is to be deprived of his life, liberty, or property. The Fifth Amendment limits the police powers of Congress, while the Fourteenth Amendment limits the police powers of the individual states. In general, the same judicial interpretation is given to the guaranty in both amendments.

The courts recognized early that the majority of litigation over the due process guarantee involved the Fourteenth Amendment. In education, the Fifth Amendment has appeared most frequently in cases concerning self-incrimination by teachers and pupils, and in cases involving loyalty oaths for teachers and school administrators. The Fourteenth Amendment has appeared in an extensive array of court cases concerning the school's authority to regulate teacher and student behavior, racial integration, equal educational opportunity and the funding of public schools.[12]

Whether applying the Fifth or Fourteenth Amendments, the due process guaranty assures "that everyone shall have his life, liberty, property, and immunities protected by the general rules characteristic of, basic to, and existing in our society under our system of jurisprudence." However, "the Federal Constitution does not declare what principles are to be applied to ascertain whether there has been due process of law."[13] In recognition of this, the United States Supreme Court has never attempted to define with precision the words "due process of law."

While the guaranty of procedural due process requires no particular form of procedure, some principles of justice ranked as fundamental have emerged. These principles include: (a) the right to notice, (b) the right to a hearing, (c) the right to personal presence, (d) the right to counsel, (e) the right to raise issues, (f) the right to protection against arbitrary rulings and the right to fairness and impartiality, (g) the right to a hearing time, (h) the right to proof of damages, (i) the right to introduce evidence, and (j) the right to a hearing before a tribunal of jurisdiction.

The guaranty of due process of law in the Fifth Amendment binds the Federal government, while that enumerated in the Fourteenth Amendment binds the states. It logically follows that the requirement of procedural due process extends to every case of the exercise of governmental power, whether that exercise of power is from the federal or state legislative, executive, or judicial branches. Furthermore, every federal and state officer and official is bound by either the Fifth or Fourteenth Amendments in the performance of duties.

The guaranty of procedural due process has also been extended to encompass the officers and officials exercising delegated powers within what has been termed the "fourth branch of government," the administrative agencies.[14] In recognition of the complexity of our modern social, economic, and industrial systems, all states and the Federal government have developed networks of administrative agencies which efficaciously administer to executive, legislative, and judicial enactments and decisions. In pursuance of these administrative networks, Congress and state legislatures have conferred upon administrative agencies discretionary authority to enact rules and regulations for the effective management of the various increased functions of government.

Traditionally, administrative agencies conducted adjudication proceedings informally, and were, in general, not restricted by the technical or formal rules of procedures which govern the Federal and state judicial systems. Because the procedural process standards applicable to administrative agencies were not as formal and strict as the standards appropriate for the judicial systems, the regularity of procedural due process standards in administrative adjudication proceedings were not to be tested by the more formal judicial standards.

However, with their extensive investigative, rule-making, and adjudicating powers, the administrative agencies are determining more private as well as public rights. Concomitant with this increase in power, more formal judicial regulation of procedural due process standards in administrative adjudication has emerged. As the court stated in Hannah v. Larche (1960),

> When governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that they use the procedures which have traditionally been associated with the judicial process.[15]

Specifically, administrative agencies "must pursue the same general conduct that a court would exercise in safe-guarding the fundamental constitutional rights of the citizen."[16] While recognizing that due process does not always necessitate a judicial process, and that all the formalities of judicial proceedings are not essential to constitute due process of law in an administrative proceeding, the courts are, nonetheless, demanding that administrative agencies exercising adjudicative, judicial, or quasi-judicial powers meet some, if not most, of the essential elements deemed fundamental to guarantee due process (e.g., in re Gault, 1967; Kent v. United States, 1966; Mills v. Board of Education of the District of Columbia, 1972; Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 1972).[17] Since the public schools are administrative agencies of the states, the movement for more formal procedural due process safeguards also applies to educational adjudicative decision-making. The procedural due process requirements of P.L. 94-142 clearly mandate

that fundamental civil rights are to be observed in the public schools as well as in civil or criminal court cases.

Essential to procedural due process is the right to notice. One must be informed of the pending subject of review "so that he can choose for himself what action he will take in reference to it."[18] However, once "a person has been brought into a proceeding by notice, [procedural] due process does not require notice of all subsequent steps in the proceeding."[19] Two impositions, however, have been placed on the lack of further notice after initial contact:

- if after a judgment of dismissal of the action has been rendered, the action cannot, without motion or proceedings to vacate the judgment and without notice, be reinstated, and
- if in the course of a proceeding, amendments are made which materially enlarge or change the action, an additional notice is necessary.[20]

To meet the requirements of procedural due process, the notice must:

- be such as is likely to be received and plain to understand,
- be such as one desirous of actually informing the person to be notified might reasonable adopt to accomplish it,
- be given a sufficient length of time before the hearing to afford opportunity to be present, and
- should be sent to those who are to be affected by a judgment or order.[21]

Commensurate with the right to notice, the right to a hearing is essential for procedural due process. No person may be legally divested of his life, liberty, or property "unless he is allowed a hearing before an impartial tribunal, where he may contest the claim set up against him, and be allowed to meet it on the law and facts and show if he can that it is unfounded."[22]

By definition, the right to a hearing implies a right to present evidence at the hearing. As stated in Handlon v. Belleville (1950),

> "A hearing is the hearing of evidence and argument."[23]

Reasonable conditions must also be imposed as a condition of a hearing although a rule of procedure that works a particular hardship on a particular defendant does not necessarily make the rule inappropriate to meet the requirements of procedural due process.

Any person who is to be affected by the decisions of a hearing has the right to be present at the hearing in person and to be represented by counsel. Implicit with the right to a hearing is the right to aid by counsel. "In both civil and criminal cases . . . the right to appear by counsel, and the arbitrary refusal of such right constitutes a deprivation of [procedural] due process."[24] Furthermore, procedural due process requires that:

- a party sought to be affected by a proceeding should have the right to raise such issues and set up any defense which he may have in the cause, and
- confront and cross-examine witnesses.

Another essential element of procedural due process is that "arbitrary action by the tribunal* in the hearing . . . or in its order violates due process."[25] Procedural due process requires that a hearing be fair and impartial is recognized "as a primal necessity . . . for the adjudication of rights."[26] Furthermore, impartiality is violated if a member of the tribunal has his adversary as a member of that tribunal.

The Fourteenth Amendment forbids unfairness in the use of evidence, regardless of the appropriateness or inappropriateness of this evidence. As stated by the court in Green v. McElroy (1959), "It is an immutable principle of jurisprudence that . . . the evidence used to prove the case, . . . must be disclosed to the individual so that he has an opportunity to show that it is untrue."[27]

And finally, due process of law requires a hearing before a court or other tribunal having jurisdiction of the cause. Two essential factors reside in this right:

- the tribunal must be sanctioned by law and governed by rules of law previously established, and
- the tribunal must be the legally constituted body for determining the question under review.

These procedural safeguards parallel:

- some of the standards required by criminal courts in their disposition of offenses punishable by fine or short-term imprisonment,
- the standards required by universities and colleges in their regulation of student discipline,
- the litigation concerning the procedural regularity in administering public school discipline,
- the litigation concerning the procedural requirements necessary for involuntary commitments for mental patients, and
- the litigation concerning the procedural requirements necessary for pupil placement in special education programs.

In general, federal and state courts do not differentiate between varying student populations and basic procedural due process standards. Standards applicable to college students are also appropriate for high

*Tribunal refers to any legally constituted forum involved in judicial, quasi-judicial, or other adjudicative decision-making. This forum may be an administrative hearing.

school students, or exceptional students (e.g., Mills v. Board of Education of the District of Columbia, 1972; Williams v. Dade County School Board, 1971).

Two precedent setting court cases have enumerated procedural due process rights for children: (a) Dixon v. Alabama State Board of Education (1961), and (b) in re Gault (1967). In Dixon, the question presented by the pleadings and evidence was whether due process requires notification and some opportunity for a hearing before students at a tax-supported college were expelled for misconduct. The question for decision did not "concern the sufficiency of the notice or the adequacy of the hearing, but whether the students had a right to any notice or hearing whatever before being expelled."[28] The court affirmed this right stating "whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law."[29]

In Gault, the court held that constitutional guarantees must be provided even within social rehabilitory institutions (e.g., juvenile court systems) specifically developed for providing "solicitous care" or "regenerative treatment."[30] Gault enumerated six constitutional guarantees for children:

- a right to notice of charges brought against them,
- right to counsel,
- right to confront and cross-examine witnesses,
- privilege against self-incrimination,
- right to transcript of the proceeding, and
- right to appellate review.

The implication of these cases "is that a juvenile who happens to be part of a system that purports to exist for his benefit cannot be deprived of his rights simply because he has not achieved adult status."[31]

Procedural Due Process and Handicapped Children

Wald has noted that "exclusionary practices may . . . be attacked as violative of procedural due process when no hearing is held before exclusion, regardless of the legality of the ground for exclusion."[32]

A number of courts have ruled as to the applicability of procedural due process rights in relation to (a) the placement of handicapped children in special programs, (b) exclusion of handicapped children from educational programs, and (c) termination of participation in a program (e.g. LeBanks v. Spears, 1973; Marlega v. Board of School Directors of the City of Milwaukee, 1970; Mills v. Board of Education of the District of Columbia, 1972; Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 1972). Of these cases, the "most notable is Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (1972), in which the court, prior to considering a proposed consent decree between the parties, determined that application of full

due process procedures [was] required to protect all mentally retarded children eligible for a public education."[33]

In concluding that it was "the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity,"[34] the Court provided an Amended Stipulation that prescribed a necessary procedural due process model.

In concert with the P.A.R.C. decision, District Judge Waddy noted in Mills (1972) that:

> Not only are plaintiffs and their class denied the publicly supported education to which they are entitled, many are suspended or expelled from regular schooling or specialized instruction or reassigned without any prior hearing and are given no periodic review thereafter. Due process of law requires a hearing prior to exclusion, termination of classification into a special program.[35]

Procedural Due Process Requirements of P.L. 94-142

As stated previously, while due process does not require a particular form of procedure, several principles of justice ranked as fundamental have emerged. These principles include:

- the right to notice,
- the right to a hearing,
- the right to personal presence,
- the right to counsel,
- the right to raise issues,
- the right to protection against arbitrary rulings and the right to fairness and impartiality,
- the right to a hearing time,
- the right to proof of damages,
- the right to introduce evidence,
- the right to a hearing before a tribunal of jurisdiction

In concert with the due process model prescribed in the Amended Stipulation of P.A.R.C., each of these fundamental principles is incorporated into the procedural safeguard requirements of P.L. 94-142. More specifically, as stated in Paragraph 121a.501 of the regulations,

- "Each state educational agency shall ensure that each public agency establishes and implements procedural safeguards."

Prior notice. Prior written notice and parent consent must be given to the parents of a handicapped child before the state or local educational agency proposes to initiate or change, or refuses to initiate or change, the identification, evaluation or educational placement of the child or the provision of a free appropriate education. The notice must include:

- a full explanation of all of the procedural safeguards available to the parents,
- a description of the action proposed or refused by the agency, and explanation of why the agency proposes or refuses to take any action, and a description of any options the agency considered and the reasons why those options were rejected,
- a description of each evaluation procedure, test record, or report the agency uses as a basis for the proposal or refusal, and
- a description of any other factors which are relevant to the agency's proposal or refusal.

Furthermore, the notice must be:

- written in language understandable to the general public, and provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so, and
- if the native language or other mode of communication of the parent is not a written language, the state or local educational agency shall take steps to insure that: (a) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, (b) the parent understands the content of the notice, and (c) there is written evidence that the above requirements have been met.

The right to a hearing. The parent or guardian of a child, as well as a local educational agency, may initiate a hearing for any proposal or refusal to change the identification, evaluation, educational placement, or any provision relevant to a free appropriate public education. Any such hearing "must be conducted by the State or local educational agency, as determined under State statute, State regulation, or a written policy of the State educational agency," and must be in compliance with the Federal due process regulations delineated in P.L. 94-142.

The right to personal presence. Although Paragraph 121a.508 (Hearing Rights) of the regulations for P.L. 94-142 does not explicitly state that the parents of a child have the right to personal presence at a hearing, no other conclusion is tenable.

The right to counsel. Paragraph 121a.508 (Hearing Rights) states that "any party to a hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children."

The right to raise issues. Similar to the right to personal presence, the right to raise issues in a hearing is implicitly understood although not explicitly stated in P.L. 94-142.

The right to protection against arbitrary rulings and the right to fairness and impartiality. To insure an impartial due process hearing, the regula-

tions require that a hearing must *not* be conducted:

- by an employee of the state or local educational agency who is involved in the education or care of the child, or
- by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

However, a qualified person may conduct a hearing even though paid by the agency to serve as a hearing officer.

The right to a hearing time. The regulations stipulate that state and local educational agencies shall take steps to ensure that each hearing or review of a hearing is:

- commenced and completed as quickly as possible, consistent with fair consideration of the issues involved, but not later than 45 days after receipt of a complaint unless the parties agree to an extension, and
- is conducted at a time and place which is reasonably convenient to the parents and child involved.

The right to proof of damages. Since placement in a special education class is assumed to be a serious or adverse action, the damages that may result from any action relevant to the proposal or refusal to initiate or change any educational provisions concerning the identification, evaluation, placement, or right to a free appropriate public education are issues applicable for a due process hearing.

The right to introduce evidence. Paragraph 121a.508 (Hearing Rights) of the regulations states that "any party to a hearing has the right to present evidence and confront, cross-examine, and compel the attendance of witnesses."

The right to a hearing before a tribunal of jurisdiction. The original tribunal of jurisdiction for a due process hearing relevant to P.L. 94-142 should be the local educational agency, or, in some cases, the state educational gency. However, the regulations for P.L. 94-142 state that if the hearing is conducted by a local educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the state educational agency for an impartial review, or take the findings and decision made in a hearing or state educational agency review hearing to a civil court.

Four additional due process rights accorded handicapped children and their parents concern:

- an opportunity to examine records,
- a child's status during proceedings,
- surrogate parents, and
- independent evaluations.

Opportunity to examine records. Paragraph 121a.502 of the regulation specifies that "the parents of a handicapped child shall be afforded an

opportunity to inspect and review all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education."

Child's status during proceedings. Paragraph 121a.513 specifies that "during the pendency of any administrative or judicial proceedings regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement and if the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings."

Surrogate parents. Paragraph 121a.514 requires that the state educational agency shall ensure that the rights of child are protected when the parents of the child are not known, unavailable, or the child is a ward of the state, including the assignment of an individual to act as a surrogate for the parents. This requirement must include a method for determining whether a child needs a surrogate parent, and for assigning a surrogate parent to the child. The criteria for selection of surrogates includes:

- that a person selected as a surrogate has no interest that conflicts with the interests of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child,
- a person assigned as a surrogate must not be an employee of the State or local educational agency which is involved in the education or care of the child, and
- a person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

Independent evaluation. Paragraph 121a.503: (a) specifies that parents of a handicapped child must be afforded the opportunity to obtain an independent evaluation of the child, and (b) addresses the issue of who pays for the evaluation and under what circumstances. This requirement includes:

- the local educational agency shall inform the parents of a handicapped child that they have a right to obtain an independent educational evaluation of the child,
- an independent evaluation means an evaluation conducted by a fully certified or licensed professional examiner who is not employed by and does not routinely provide evaluations for the state or local educational agency responsible for the education of the child,
- a parent has the right to an independent educational evaluation, at public expense, if the parent disagrees with an evaluation obtained by the local educational agency. However, the local educational agency

may initiate a hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense,

- if the parent obtains an independent educational evaluation at his or her own expense, the results of the evaluation must be considered by the state or local educational agency in any decision made with respect to the provision of a free appropriate public education and may be presented as evidence at a hearing, and
- if a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

Impact of Procedural Due Process Upon Organizational Objectives and Policy Formulation

If the various requirements of P.L. 94-142 are to be successfully incorporated into local educational agencies, the cooperative effort of all administrative, instructional, and support personnel involved in the education of the handicapped will be essential. To avoid fragmented efforts and conflicting objectives in implementing the Act, states are required to develop annual program plans, while local districts are required to submit annual applications (See Chapter II for discussion). Paragraph 121a.122 of the regulations requires that a state's annual program plan "must include in detail the policies and procedures the state will undertake or has undertaken in order to ensure that a free appropriate public education is available for all handicapped children." Paragraph 121a.220 requires that a local educational agency application "must include procedures which ensure that all children residing within the jurisdiction of the local educational agency who are handicapped . . . and who are in need of special education and related services are identified, located, and evaluated."

In developing and implementing the annual program plans and applications, two important administrative activities will be necessary. These are,

- development of a hierarchy of organizational objectives, and
- policy formulation.

For states and local districts to successfully implement P.L. 94-142, a hierarchy of organizational objectives will be necessary to achieve the goals of (a) providing a free appropriate public education to all handicapped children between the ages 3 through 21 by 1980, and (b) providing full educational opportunities to all handicapped children, ages 0 through 21. Furthermore, a local educational agency will find it necessary to translate these goals into more meaningful intermediate objectives for individual administrative, instructional, and support service departments and per-

sonnel. The administrative, instructional, and support personnel will then have to reexamine their current roles and responsibilities in accordance with the overall goals and various intermediate objectives for implementing P.L. 94-142.

If objectives are intermediate steps for achieving a district's goals, "policies are guides to those goals. Policies are plans — guides to action. More specifically, policies include a body of understanding (generally known by members of the group) that makes the action of each member in a given set of circumstances more predictable to other members."[36] Policies permit personnel to exercise judgment in decision-making while serving as a flexible guide to administrative behavior. Haynes, Massie and Wallace note, however, that policy "is not synonymous with rule, which states specifically what must or must not be done."[37]

John Glover has summarized the characteristics required for good policy:

- it must delineate clearly the objective from which it is derived,
- it must be in understandable writing,
- it must prescribe criteria for current and future action,
- it must be stable but amenable to change, consistent with [educational] conditions and [judicial] requirements,
- it must be a canon from which precepts of conduct can be derived,
- its edict must be capable of being accomplished,
- it should prescribe methods of accomplishment in broad terms, but allow for the discretion of those responsible for preparing the precepts of conduct,
- its derivative rules of conduct must not be subject to the discretion of those who are governed by them.[38]

From the above discussion, two important points need to be emphasized:

- procedural due process is a decision-making process that involves both policy formulation and rule-making, and
- as a decision-making process that affects administrative policy formulation and rule-making, the procedural due process requirements of P.L. 94-142 can have a dramatic impact on the total organizational response to decision-making relative to the provision of special education services to handicapped children.

Policy formulation and procedural due process share several functional characteristics:

- as guides they both can make the actions of public school personnel more consistent and predictable,
- they both give direction and scope to specific decision-making,
- they both can speed decision-making for they provide a framework with which the decision may be made,

- they both summarize past experience in the procedure of decision-making, and
- they both encourage planning by providing points of departure.

While policy formulation and procedural due process share several functional characteristics, it would be inappropriate to conclude that procedural due process is a special case of policy formulation. For procedural due process also shares rule-making characteristics; specifically, both incorporate prescribed procedures for the conduct or action of decision-making. Policy formulation allows discretion to decision-makers to formulate more flexible approaches to specific problems. Procedural due process does not allow for as much discretion or flexibility. As indicated in the statutory and regulatory requirements of P.L. 94-142, there are due process components (i.e., right to notice) and component elements (i.e., content of notice) that are obligatory. Therefore, procedural due process can be defined as a decision-making process that involves the general characteristics of policy formulation while requiring more formal rule-making.

As a decision-making process that affects administrative policy formulation and rule-making, procedural due process has the capacity to fundamentally alter the manner of decision-making relative to the provision of special education services to handicapped children. Referring to Glover's summary of characteristics required for good policy, the impact of procedural due process will,

- require administrative decision-makers in general and special education to clearly articulate in writing the goals, objectives, policies, strategies, and procedures for the identification, evaluation, placement, and provision of educational opportunities for handicapped children,
- prescribe new administrative conduct, roles, and responsibilities relative to the identification, evaluation, placement, and provision of educational services to handicapped children,
- prescribe a stable, but amenable decision-making process for adjudicating conflicting interests,
- set a standard of formal conduct that will serve as a guide to professional conduct in general,
- necessitate administrative responsibility for effective and efficient actions on the part of general and special education personnel, and
- not allow for caparious, arbitrary, or biased decision-making by public school personnel.

In conclusion, the impact of procedural due process lies not only in the specific statutory and regulatory requirements for adjudicating conflicting interests, but also in the basic manner in which decision-making is conducted.

Implementation Strategies and Effective Procedures to Avoid Adversary Relations[39]

The state educational agency has the responsibility for ensuring that handicapped children and their parents or guardians are afforded the procedural due process safeguards delineated in P.L. 94-142. Paragraph 121a.501 specifies that the state educational agency shall ensure that each public agency in the state adopts and implements procedural safeguards. This responsibility represents the Federal government's recognition that, in general, states have been responding to Federal, judicial, and legislative requirements in the area of due process in special education. The Council for Exceptional Children estimates that "at the time the Education Amendments of 1974 (P.L. 93-380) was signed into law, . . . twelve states had legislation containing references to due process requirements in special education and thirteen states had regulations containing such requirements. A review of state legislation and regulations in Spring, 1976, revealed that twenty-three states now have statutory special education due process provisions while virtually every state has due process requirements for special education specified in state regulations, binding state plans submitted under P.L. 93-380, state guidelines, or proposed regulations or guidelines that are in various states of the state administrative process."[40]

Even though it is a state educational agency responsibility to develop and implement the procedural safeguards for P.L. 94-142, "a basic inadequacy in many states is the lack of information provided to the public concerning the specific policies in force and the procedures used to establish them."[41] Kaye, in a discussion of special education administrative policymaking, emphasized that,

> since administrative policy has such critical impact, it seems imperative that professionals and consumers of services be informed about the procedures which develop agency policies and its associated power. Because each state has unique procedures for developing the agency rules, the process is neither easily understandable nor easily explainable.[42]

While administrative responsibility of general and special educators relative to procedural due process varies from state to state and even from district to district, general and special educators still retain authority for affecting decisions concerning the delivery of services to handicapped children. Specifically, P.L. 94-142 addresses four substantive areas to which administrative decisions are applicable: (a) identification, (b) evaluation, (c) placement, and (d) the provision of a free appropriate public education. Furthermore, it is the prerogative of the parent, guardian, surrogate parent, or state/local educational agency to request an impartial due process hearing, including all hearing rights, regarding disagreements with educational decisions in any of these four substantive areas.

It will be to a school district's benefit to avoid situations which require

formal due process hearings. The reasons for this are based upon the belief that efficient and effective management of the school district may be impaired each time a formal hearing is convened. The economic costs involved for school districts to hold hearings are considerable, while the time required for school personnel to present evidence and provide documentation can be disruptive to educational programs. Furthermore, the financial and emotional cost to parents can be *substantial*. Budoff, in examining the impact of Massachusetts' Chapter 766 due process requirements, observed that,

> In terms of financial cost to parents, 85% of the parents stated that this was a costly procedure quoting figures up to $4,000. Costs incurred included attorney fees, paying for independent evaluations, paying for expert witnesses to appear at the hearing, time lost from jobs, duplicating costs, and long distance telephone calls. Without exception, all parents related massive psychic cost to themselves and their families. Twenty-five percent complained of excess nervousness, severe anxiety attacks and enormous disruptions of normal family routines; another 25% from excess nervousness and disruption of family routines; and 35% complained of one of these two factors. In 15% of the families, one or more family members became physically ill as a result of their nervousness and anxiety.[43]

The Bureau of Education for the Handicapped addresses the issue of invoking due process procedures and suggests that this action does not inherently create an adversarial setting. The intent of utilizing due process is to create a forum which permits interaction between parents and school authorities. The goal of the process is better educational programming for children through establishment of clear understanding of all parties' responsibilities, and through clarification of actions and strategies designed to benefit the handicapped child.

How then can an adversarial position be avoided? It is suggested that this goal can be attained through: (a) changes in leadership exerted by administrators, and (b) the establishment of an effective communication network with parents, guardians, or surrogate parents of handicapped children.

Effect on leadership behavior. The process of change requires an implicit amount of impact exerted by leadership personnel in order for changes to be implemented. The leadership changes required by mandating that procedural due process is now applicable to handicapped students is no exception. In many districts this application of rights was circumvented due to state rules, regulations, statutes, or administrative codes. Now, having a basis in Federal law, such state or local rules, regulations, statutes, or administrative codes must be changed. And with such changes, it follows that administrative behavior must also change.

Public school administrators may well view this responsibility in the

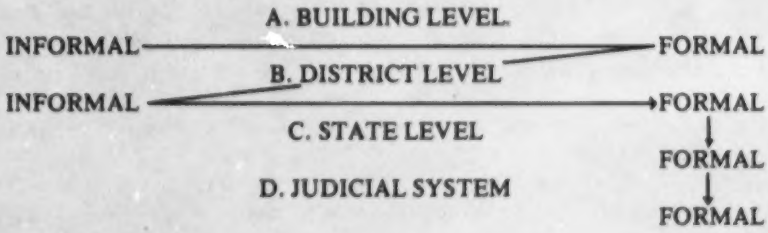
area of applying procedural due process to the handicapped from a change-agent approach. Lipham[44] expressed his view of the change-agent as one requiring establishment of a new structure or procedure. This view provides the distinction between managerial leadership and administration. The managerial leader initiates necessary changes to achieve the organization's goals and objectives while the administrator utilizes existing structures and procedures. Since the application of procedural due process to the education of the handicapped is a new development, the exercise of managerial leadership is necessary. The superintendent through the leadership position as head manager of a school district, has accessibility to power of control necessary to implement change. Other personnel, such as special education directors and building principals, can provide effective leadership to implement procedural due process requirements. The means of accomplishing change can be brought about through an establishment of procedures to affect the change, or through delegation of responsibility to personnel lower on the chain of command including clear delineation of those actions for which they are responsible.

A Communication-Information System. Recognizing that changes are required and that public school personnel can affect changes, focus should be given to a proposed method for implementing necessary changes. The application of procedural due process to the provision of a free appropriate public education can be conceptualized as a refined, inclusive system of communication. The purpose of the system is to facilitate the information flow between public school personnel and parents, guardians, or surrogate parents of handicapped children. Having parents actively participate in educational decision-making relevant to their children, by keeping parents informed of educational decisions, and the rationale for such decisions, a dialogue between parents and school personnel can avoid most confrontations.

The communication between parents and public school personnel should "bring the parties and information together [and] . . . thrash it out freely and openly."[45] Inquiring into lawyers' attitudes toward due process and special education hearings, Budoff found that lawyers felt that the value of due process "is enhanced by a substantive and active negotiation process, since this allows the outstanding issues to be clarified and, most often, resolved. All the attorneys felt that the due process hearing should be resorted to only after all possibility for negotiation had been exhausted."[46] At the very least, this process of information flow and negotiation presents a forum for parents and school personnel to present their respective points of view.

The optimal place for such dialogue to occur is at the building level. Beyond this point, the possibility for resolution of differing points of view becomes increasingly threatened with formal procedures and requirements. The following diagram attempts to show the differing forums where due process can be addressed.

PROCEDURAL DUE PROCESS



Distinctions can be made between those requirements of the Act which call for formal procedures to be applied from those in which informal means can be used. The formal requirements are clearly specified. Should due process proceed to the formal stage, the role of school personnel will clearly be reactive (e.g., by presenting testimony or evidence relating to matters which have been done previously).

In summary, the constitutional principle of procedural due process provides to an individual the opportunity to contest proposed administrative action employing a series of proceedings which ensure that fairness and good judgment govern the entire decision-making process. Procedural due process is not only an adjudicative process for governing administrative actions, but is also a: (a) basic decision-making process that involves both policy formulation and rule-making, and (b) decision-making process that can have a dramatic impact on the total organizational response to decision-making relative to the provision of special education services to handicapped children. To avoid adversarial situations involving parents and school personnel, it is suggested that: (a) managerial leadership be exerted by school personnel, and (b) development of a communication system that emphasizes the exchange of information and ideas, as well as a substantive and active negotiation process that allows for participatory decision-making. And finally, school personnel will devise their own means of complying with the requirements of procedural due process of P.L. 94-142. It can only be hoped that such a goal will be attained and that the results will bring about better educational programming for all handicapped children.

Chapter V

Individualized Education Programs

As defined in Section 602(18) of The Education for All Handicapped Children Act (P.L. 94-142), the term 'free appropriate public education' means special education and related services which are provided in conformity with the individualized education program required under Section 614(a)(5) of the Education of the Handicapped Act (P.L. 91-230, as amended by P.L. 93-380 and P.L. 94-142). Section 614(a)(5) requires that a local educational agency or an intermediate educational unit which requests Part B funds must assure in their application to the state educational agency that they "will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually" (p. 14). Furthermore, Section 4(a) defines 'special education' and 'related services' to include,

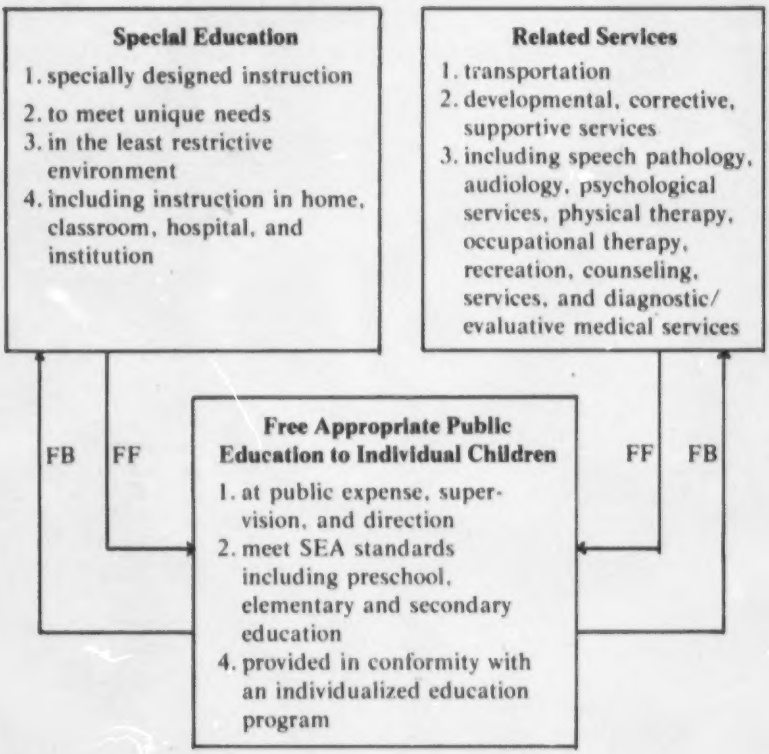
> the term 'special education' means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions, and
>
> the term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

In Figure 1, the three basic service dimensions of free appropriate public education, special education, and related services are delineated as a definition construct. As indicated by the feedforward (FF) and feedback (FB) arrows in Figure 1, there are two salient functions of the individualized education program (IEP) component:

- IEP as a management tool (feedforward) for planning, programming, and evaluating special education and related services provided to individual handicapped children, and
- IEP as a management tool (feedback) for planning, programming, and evaluating special education and related services relative to organizational decision-making, operation, and structure.

FIGURE 1

Definition Construct of Free Appropriate Public Education


Special Education
1. specially designed instruction
2. to meet unique needs
3. in the least restrictive environment
4. including instruction in home, classroom, hospital, and institution
Related Services
1. transportation
2. developmental, corrective, supportive services
3. including speech pathology, audiology, psychological services, physical therapy, occupational therapy, recreation, counseling, services, and diagnostic/ evaluative medical services
FB
FF
Free Appropriate Public Education to Individual Children
1. at public expense, supervision, and direction
2. meet SEA standards including preschool, elementary and secondary education
4. provided in conformity with an individualized education program
FF
FB

Relative to these two functions of the IEP, the remaining portion of Chapter V examines,

- The IEP as a management tool for planning, programming, and evaluating special education and related services provided individual handicapped children, with emphasis on the (a) statutory and regulatory definition of the IEP, (b) developmental history of individualized education, and (c) service delivery system components for providing free appropriate public education, and
- the IEP as a management tool for planning, programming, and evaluating special education and related services relative to organizational decision-making, operation, and structure.

The IEP as a management tool for planning, programming, and evaluating special education and related services provided individual handicapped children

Definition of IEP. Section 4(a)(4) of P.L. 94-142 defines individualized education program to mean "a written statement for each handicapped child developed in any meeting by (a) a representative of the local educational agency (or an intermediate educational unit) who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, (b) the teacher, (c) the parents or guardian of such child, and (d) whenever appropriate, such child. This statement shall include (a) a statement of the present levels of educational performance of the handicapped child, (b) a statement of annual goals, (c) a statement of short-term instructional objectives, (d) a statement of the specific educational services to be provided to the handicapped child, (e) a statement relative to the extent to which the handicapped child will be able to participate in regular educational programs, (f) the projected date for initiation and anticipated duration of such services, and (g) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved."

Developmental history of individualized education. As delineated in Section 602(18) of P.L. 94-142, the definition of special education encompasses two fundamental philosophical concepts. First, special education involves specially designed instruction to meet the unique needs of handicapped children. This philosophical concept is indicative of commitment by special educators to: (a) move away from the "medical model" of conceptualizing diagnosis and treatment in terms of intervention approaches for specific handicapping categories, and (b) move toward a functional analysis of the behavioral patterns and unique learning environments and resources necessary for "individualizing" each handicapped child's educational and therapeutic program. Significantly, this move recognizes the importance of non-categorical or generic instructional approaches (based

on basic behavioral principles) in structuring and modifying a handicapped learners behavior and environment, while also recognizing that generic instructional approaches, when operationalized in the classroom, are flexible enough to meet the unique needs of all handicapped children. Gotts has observed that,

> the collective experience of special education teachers, support personnel, administrators and others close to the situation was that diagnostic categories or labels served poorly as a basis for designing appropriate instruction [and] given an opportunity to consider alternate ways of thinking about the problem, special educators were quick to accept, adapt, and implement systematic programs that emphasized and facilitated individualized instruction.[1]

Second, special education involves the integration, when appropriate, of handicapped children with their non-handicapped peers in the normal educational environment. Based on the judicial foundation of the least restrictive alternative doctrine and the belief that handicapped individuals need to participate in the "patterns and conditions of everyday life which are as close as possible to the norms and patterns of the mainstream of society,"[2] the application of this "normalizing principle" to special and general education programs may lead to changes in existing service delivery arrangements as well as in the allocation of fiscal, material, and personnel resources to special education programs.

Emerging concurrently, these two philosophical concepts have been employed in a wide variety of educational programs and projects. Scalon has described an individually prescribed instruction system (IPI) in which specific behavioral and instructional objectives are "interlinked with diagnostic tools and teaching materials."[3] With the IPI system, the teacher's role is to:

- diagnose a handicapped student's abilities employing a placement instrument and achievement pretest representing the objectives within a learning unit, and
- prepare and implement a "learning prescription utilizing the set of objectives and complementary instructional materials produced for the program."[4]

As Bruininks and Rynders note, "the teacher's role in an IPI program becomes that of progress analyzer, tutor, and instructional manager, in contrast to the more conventional teaching role of dispenser of instruction."[5]

Stillwell, Artuso, Taylor, and Hewett have described what has come to be known as the "engineered classroom."[6] The instruction premise of the engineered classroom is that an educational model as a developmental sequence needs to provide for the merging of individualized instructional techniques with the fundamental principles of behavior modification theory.

And finally, Peter and Wisely describe the prescriptive teaching system which recognizes "that the systems approach is also a suitable methodology for dealing with certain human and social problems [and that] it can provide the unifying or integrating mechanism for utilization of . . . scientific knowledge about teaching and learning."[7] The prescriptive teaching system operates to optimize instruction for the handicapped child while providing a systematic program of teacher education. Furthermore, "the prescriptive teaching system is an organization of definable and observable components of the process of instruction to achieve a predetermined or prescribed objective."[8]

While P.L. 94-142 does not prescribe any specific approach for providing instruction to handicapped children, several basic characteristics of individualized programming emerge that are in concert with the general movement examined above, as well as with the various programs and projects described. Gotts lists twelve of these characteristics:

- some means of assessing a child's performance in all areas thought to be relevant to successful outcomes on long term program goals,
- some conceptual framework — perhaps related to chronological age expectancies — which permits: (a) the interpretation of assessment data in terms of personal, familial, and cultural demands and (b) prioritization of goals and objectives,
- development of a concise summary of interpreted data,
- formulation of goals and objectives based on assessed needs or deficits,
- some means of communicating summarized and interpreted assessments and the goals and objectives based on them to the individuals responsible for developing the instructional program,
- a collection of ideas for strategies, activities, materials, instructional arrangements, and the organization and sequencing of these into a plan of action which reasonably may be expected to facilitate the child's optimal learning, growth, and normalization,
- some means of summarizing the overall plan of action for those working directly with the child and those who assist direct line personnel so as to facilitate accomplishments of stated goals and objectives,
- some built-in feedback loops that serve to test current outcomes of instruction against desired outcomes,
- some means of modifying the plan of action when feedback shows significant objectives — outcomes discrepancies or when more complete information accrues as the result of the ongoing assessment-instruction-evaluation of instruction cycle,
- when individualizing within group contexts, a system for orchestrating the integration of individualized plans into an overall work-

able and manageable group instructional pattern,

- personnel who have the knowledge, skills, and values that ensure the application of the individualized process,
- institutional structures and procedures that facilitate (at the state, local, building, and class levels) the application of the individualization process.[9]

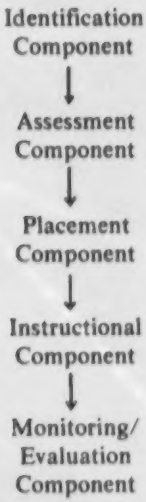
These twelve basic characteristics for any individualized education program should also be basic characteristics of the total service delivery system for providing free appropriate public education to handicapped children. Specifically, relating back to Figure 1, these twelve characteristics of individualized education programs should also characterize the educational identification, assessment, placement, instructional, and evaluation activities of the special education and related services dimensions.

The IEP and service delivery system for providing free appropriate public education in terms of planning, programming, and evaluating

To provide a full service delivery system for a free appropriate public education to handicapped children, the National Association of State Directors of Special Education recommends a program model incorporating the five components of identification, assessment, placement, instruction and evaluation.[10] Presented in Figure 2 is the sequence of these components.

FIGURE 2

Sequence of Full Service Delivery System Components



By combining these five program components with the administrative activities of planning, programming, and monitoring/evaluating, a matrix of administrative responsibilities emerges. Delineated in Figure 3 in this matrix.

FIGURE 3

Matrix of Full Service Delivery Model with Administrative Responsibilities

Administrative Responsibilities

	Planning	Programming	Evaluation
Identification			
Assessment	X	X	X
Placement	X	X	X
Instructional	X	X	X
Monitoring/ Evaluating	X	X	X

X indicates primary points of impact.

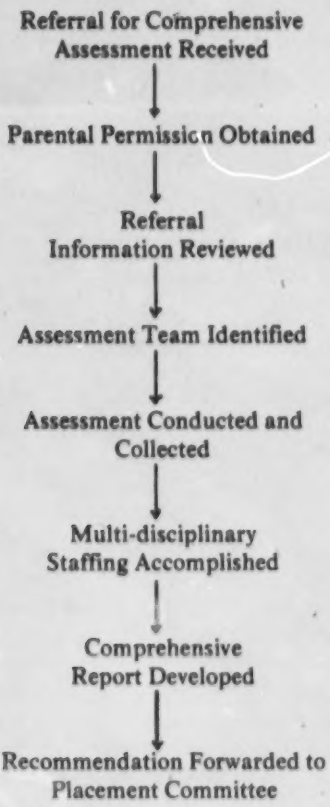
As stated previously, the IEP is a management tool for planning, programming, and evaluating special education and related services (a) provided individual handicapped children, and (b) relative to organizational decision-making, operation, and structure. Although the IEP can impact on any of the five full service delivery system components, the primary points of impact (as indicated in Figure 3) will be in the assessment, placement, instructional, and evaluation components. An examination of each of the primary points of impact relative to the administrative activities of planning, programming, and evaluating is appropriate.

Assessment process. Assessment is the process of determining student cognitive, affective, and psychomotor characteristics and functioning based on medical, educational, sociological, physiological, and psychological testing and observing. The purpose of assessment is to identify and describe cognitive, affective, and psychomotor strengths and weaknesses, and to utilize this information for determining the placement and instruc-

tional goals and objectives necessary to meet the medical, educational, sociological, physiological, and psychological needs of a student. Figure 4 presents a recommended sequence of specific activities relative to the assessment component.

FIGURE 4

Sequence of Assessment Activities



Paragraph 121a.532 of the regulations delineates assessment procedures to ensure that children identified, referred, screened, and found to be in need of assessment, will receive an interdisciplinary diagnostic evaluation

and a comprehensive staffing. In this evaluation process, tests and other evaluation materials must:

- be provided and administered in the child's native language or other mode of communication (unless it is clearly not feasible to do so),
- be validated for the specific purpose for which they are used,
- be recommended by their producer for the specific purpose for which they are used,
- be administered by personnel who meet applicable certification or licensure requirements under state law,
- be tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient,
- be administered to a child with impaired sensory, manual or speaking skills in such a manner so that the test results accurately reflect the child's aptitude or achievement level, rather than merely reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure),
- involve more than one test or type of test,
- include information from sources other than ability or achievement tests, including information concerning physical condition, sociocultural background, and adaptive behavior in home and school, and the weight given to each of these sources is documented, and,
- be interpreted by a team of persons knowledgeable about: (a) the child, (b) the meaning of the evaluation results, (c) the placement options, and (d) the personnel available to provide special education and related services.

Relative to assessment, administrative planning, programming, and evaluating should involve:

- specifying personnel and delineating responsibilities for: (a) receiving assessment referrals, (b) obtaining parental permission for comprehensive assessment, and (c) reviewing assessment referrals,
- specifying special education and related services personnel necessary for assessment team composition,
- determining the assessment team's composition of mandated committee members (i.e., special education director or supervisor), and consulting members (those individuals who have special professional competencies, i.e., speech pathologists),
- delineating administrative issues and procedures for the functioning of the assessment team, including specification of decision-making style and rules of order,

- delineating assessment issues and questions to be addressed by the assessment committee, including format and specifications for evaluation reports,
- determining efficiency of committee operation, including the number of children assessed, the efficiency of operation, and the quality of administrative planning,
- specifying and delineating interdepartmental cooperation and responsibilities (i.e., special education and pupil personnel services),
- scheduling times for meetings and determining locations,
- holding assessment team committee meetings,
- determination of the source of payment for evaluations specified, and
- observing appropriate due process safeguards.[11]

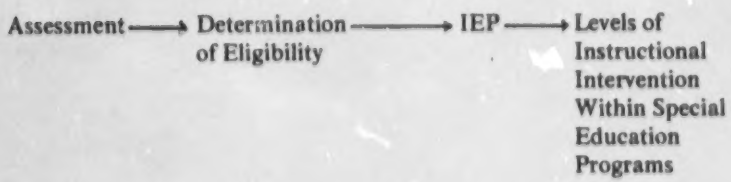
Two salient attributes of the assessment component are:

- information obtained by the assessment committee provides the programming foundation for the development of the individualized education program, and
- as programming instruments, assessment evaluations, including standardized achievement and aptitude tests, and the results of such instruments, have to be "translated" into specific program goals and objectives for inclusion in the IEP.

The first attribute specifies that the assessment process provides the necessary information concerning a child's program development. However, while such information may indicate placement eligibility, it does not, automatically, or even necessarily, determine program placement. P.L. 94-142 clearly mandates that a strict eligibility ⟶ placement relationship is inappropriate. Instead, the relationship of evaluation, eligibility, IEP development, and placement is now obligatory. As indicated in Figure 5, determination of eligibility provides information for individual program development (influenced by the unique needs of a child and least restrictive environment requirements), which, in turn, determines placement in a general, special, or general/special educational setting.

FIGURE 5

Assessment to Placement Relationship



The second attribute specifies that, as programming instruments, the value of assessment tests lies not in just providing an index of student achievement or aptitude, but in the instructional and therapeutic goals and objectives that can be developed from assessment test results. Again referring to Figure 5, the development of a handicapped child's individualized education program is determined by the received assessment information. Delineation of the present levels of educational performance, annual goals, short-term instructional objectives, necessary educational services, regular education program participation, dates for service delivery, and special instructional media and materials needed, will require "translating" test/subtest scores from domain related areas to specific educational or therapeutic instructional activities.

Placement process. Succinctly stated, "placement is the process of determining for each child the educational setting within which his/her individual needs can best be met under the least restrictive conditions."[12] The purpose of placement is to provide handicapped children with special education and related services so that they may receive an appropriate public education. Presented in Figure 6 is a recommended sequence of specific activities relative to the placement component.[13]

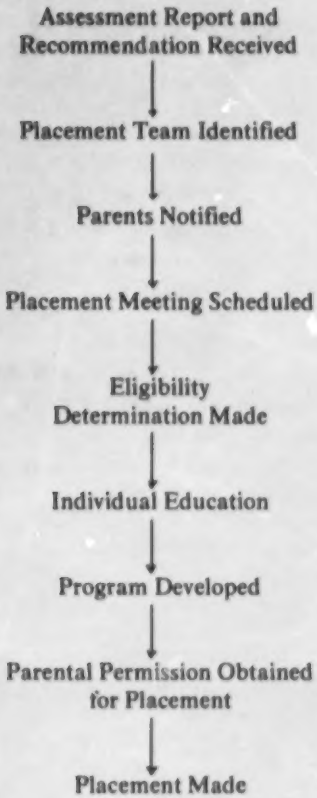
Paragraph 121a.552 of the regulations delineates placement procedures that requires each state and local educational agency ensure that each handicapped child's educational placement is determined at least annually and is based on his or her individualized education program. Furthermore, to the extent necessary to implement any individualized education program for each handicapped child, the applicable agency must provide, or arrange for the provision of, alternate placements in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, as well as make provision for supplementary services to be provided in conjunction with regular class placement.

Specific regulatory requirements (Paragraphs 121a.342-121a.347) include:

- on October 1, 1977, and at the beginning of each school year thereafter, each public agency must have in effect an individualized education program for every handicapped child who is receiving special education from that agency,
- an individualized education program must be in effect *before* special education and related services are provided to a child, and be implemented as soon as possible following a meeting, initiated and conducted by the public agency, to develop, review, or revise a handicapped child's individualized education program,
- for a handicapped child who is found to need special education services during the school year, a meeting must be held within thirty calendar days of a determination of such need,

FIGURE 6

Sequence of Placement Activities



- each public agency must ensure that at each meeting to develop, review, or revise an individualized education program, (a) a representa-
- each public agency must insure that at each meeting to develop, review, or revise an individualized education program, (a) a representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education, (b) the child's teacher, (c) one or both of the child's parents, (d) the child, when appropriate, (e) for a handicapped child who has been evaluated for the first time, a member of the evaluation team participates

in the meeting (or some other person who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation) and (f) other individuals at the discretion of the parent or agency.

- each public agency must take steps to ensure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including: (a) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, (b) scheduling the meeting at a mutually agreed upon time and place, (c) maintaining records of attempts to arrange a mutually agreed upon time and place if parents are unable or unwilling to attend the meeting.

Relative to placement, administrative planning, programming, and evaluating should involve:

- specifying personnel and delineating responsibilities for: (a) receiving the assessment committee's report and recommendations, (b) notifying parents relative to participation in the individualized education program development and subsequent placement decisions, (c) determining eligibility, (d) determining placement, (e) developing and revising the IEP, and (f) reviewing evaluation information,
- specifying special education and related services personnel necessary for the placement committee,
- determining the placement committee's composition of mandated and consulting members,
- delineating administrative issues and procedures for the functioning of the placement committee, including specifications of decision-making style and rules of order,
- delineating placement issues and questions to be addressed by the placement committee,
- determining effectiveness of placement committee, including the number of children placed, the effectiveness of operation, and the quality of administrative planning. Included in this effectiveness examination is: (a) how completely the committee met requirements for contents of the IEP, (b) how well the assigned responsibilities were accomplished, (c) success of children for whom programs have been planned, (d) evidence of communication between committee and implementers, (e) records of decisions, (f) appropriateness of placement decisions, (g) time spent in developing programs, and (h) time from referral to IEP completion to placement,
- specifying and delineating interdepartmental cooperation and responsibilities,
- scheduling times for meetings and determining locations, and

- developing individualized education programs, including: (a) outlining areas of concern or need, (b) prioritizing long-term goals, (c) writing/selecting short-term objectives for prioritized goals, (d) specifying services needed, (e) specifying persons responsible for implementing IEP, (f) specifying percentage of time in various aspects of program, (g) setting timelines, (h) specifying percentage of time in regular classroom, (i) making a placement recommendation, and (j) *establishing objective evaluation criteria.*[14]

Two salient attributes of the placement component are:

- the individualized education program as the central activity of the placement process, and
- the educational placement of a handicapped child as based upon the individualized education program.

The first attribute is indicative of the crucial importance and central role of the IEP in the placement process. Commenting on this crucial attribute, Gotts concludes:

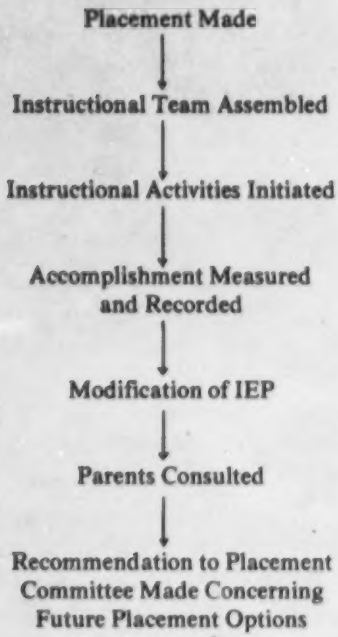
> A written plan for action serves as a guide for direct service personnel as they translate goals and specific objectives into plans for activities and sequences and patterns of activities in keeping with their instructional strategies. While any component special education teacher should be able to articulate such a plan, frequently these plans remain unspoken and unwritten. At least two consequences ensue: a) the involved do not develop the clarity of thought and purpose needed for the truly focused effort that the discipline of writing a plan should have worked to foster, and b) communication about the plan for action among members of an instructional team lacks the facilitation that a written plan could offer.[15]

The second attribute logically follows from the first: planning for administrative and instructional activities should precede the initiation of such activities. The free appropriate public education to be provided a handicapped child must be based upon a clear, concise, systematic conceptual delineation of appropriate administrative and instructional responsibilities. Such a delineation necessitates a written document; such a document is the IEP.

Instructional process. Instruction is the process of designing and conducting instructional and therapeutic activities in accordance with a prescribed set of annual goals and short-term objectives. The purpose of instruction is to provide handicapped children with an environment designed for optimum growth and development in cognitive, affective, and psychomotor abilities. Presented in Figure 7 is a recommended sequence of specific activities relative to the instructional process:[16]

FIGURE 7

Sequence of Activities for the Instructional Process



Although P.L. 94-142 mandates that a written IEP must be developed for all handicapped children, and that this IEP must contain specific instructional elements and involve specific individuals in its preparation, the Act "does not promote a type of curriculum or dictate methodology [and it] does [not] require that children be individually taught nor does it necessarily embrace behaviorism."[17] However, the instructional process will necessitate administrative planning, programming, and evaluating. These administrative responsibilities should involve:

- specifying policy assuring individual education programs for all children served directly by the local educational agency or through services contracted outside of the local educational agency,
- program standards for each type of program alternative,
- developing a management system to assure involvement of instructional and support personnel working with an individual child to

participate in the development and implementation of the child's IEP,

- providing facilities to assure optimum instructional programming,
- providing instructional materials,
- specifying procedure to assure periodic updating of IEP objectives,
- specifying procedures for annual review to assure appropriateness of IEP,
- providing for staff supervision,
- providing for technical assistance,
- providing facilities for support personnel,
- providing clerical help for support service personnel to assist in report preparation,
- providing clerical help for instructional personnel to assist in maintenance of individual education programs,
- specifying procedures to assure participation of teacher in parent conference activities, and
- developing an on-going inservice training program for all personnel involved in instructional activities with handicapped children.[18]

Two salient attributes of the instructional component are:

- appropriate instruction will require administrative and instructional assurances that implementation of the individualized education program actually occurs, and
- appropriate instruction will require administrative supervision and support of further development of the individualized education program at the direct service and support service implementer level.

While the preamble to the proposed regulations for P.L. 94-142 explicitly state that the "individualized education program . . . is not intended as a binding contract by the schools, children, and parents," state and local agencies are responsible for providing the services delineated in the IEP. And as stated previously, Section 4(a) of the Act defines the term free appropriate public education to mean special education and related services which are provided in conformity with an individualized education program. This position was affirmed in the August 23, 1977 final regulations. Paragraph 121a.349 states that "each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program." Part B, however, of the Act does not require that "any agency, teacher or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives." The value of the IEP resides in it being used as a management tool for the planning, programming, and evaluation of spe-

cial education and related services, and not merely as a compliance document needed for receiving funds. Furthermore, with active parental participation in the development of individualized programs and placement of handicapped children in appropriate educational settings, professional responsibility necessitates that the "social contract" understanding of "services promised, services delivered" should be honored. This professional responsibility will involve the monitoring and evaluating of individualized education programs.

Monitoring/evaluating process. Monitoring/evaluating is the process of making necessary changes in a handicapped child's individualized education program based upon systematic feedback from the instructional environment. Also, monitoring provides the placement committee with information relative to determining the appropriateness of the IEP and the quality of implementation. Basic monitoring functions should assure that:

- goals and objectives are being met,
- implementers will be held accountable for meeting their responsibilities, and
- program changes will be based on an accumulation of specific data.

Monitoring involves data collection and analysis; evaluation involves the judgmental decision-making based on the monitoring data. The purpose of monitoring/evaluating is to provide the necessary managerial control process of guiding activities towards some predetermined goals. The essentials of managerial control involve:

- predetermined targets,
- a means of comparing activity with a criterion,
- a means of measuring activity,
- some mechanism that will correct current activity, to achieve desired results.[19]

Program evaluation, i.e., evaluation of the appropriateness of the individual education program developed by the placement committee, is prescribed in P.L. 94-142. Specifically, the Act requires the development of "appropriate objective criteria and evaluation procedures and schedules for determining on at least an annual basis, whether instructional objectives are being achieved." Also, Section 613(a)(7) of the Act implies that the state educational agency may have to report evaluation results on individualized education programs to the U.S. Commissioner of Education.

> (7) Provide for (A) making such reports in such form and containing such information as the Commissioner may require to carry out his functions under this part, and (B) keeping such records and affording such access there to as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part.

Furthermore, Section 614(a)(11) implies that the state educational agency will have to describe in the state annual plan the procedures for evaluating the effectiveness of individualized education programs.

> (11) Provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized education programs).

As indicated in Figure 7, monitoring/evaluating is an integral part of the instructional process. This monitoring/evaluating process concerns individual program progress with a designated IEP. More specifically:

- Is the child progressing as specified in the goal statements of the IEP?
- Is the child approaching a point where he/she will or can exit to another program?
- If the program does not seem to be appropriate, what adjustments are necessary in terms of: (a) goal statements, (b) timeliness, (c) strategies, (d) materials, (e) methods, (f) resources, (g) implementers, and (h) monitoring systems?[20]

In summary, the IEP can be conceptualized as a management tool for planning, programming, and evaluating of special education and related services provided to individual handicapped children. This management tool will have a primary impact on the assessment, placement, instruction, evaluation components of a full service delivery system. The remaining portion of Chapter V examines the IEP as a management tool for planning, programming, and evaluating special education and related services relative to organizational decision-making, operation, and structure.

The IEP as a management tool for planning, programming, and evaluating of special education and related services relative to organizational decision-making, operation, and structure

In his book, *The Theory of Social and Economic Organization,* Weber "defined a formal organization as a hierarchy of interrelated offices, each vested with specific authority to carry out specific functions, duties, and responsibilities."[21] Three basic dimensions are involved in Weber's concept of organization:

- a "hierarchy of interrelated offices" involves organizational structure;
- "specific authority" involves organizational decision-making;
- "carry out" involves transforming decisions into organizational operations.

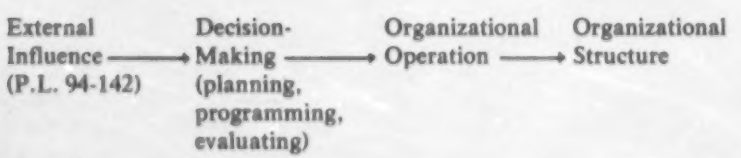
Also, social organizations do not exist in isolation; there is an active interaction with factors external to the organization. Therefore, a fourth basic

dimension of a formal organization involves the influence on organizational operation and structure of the interaction between an organization and its environments.

As stated in Chapter I, general and special educators are currently faced with the problem of initiating organizational change in providing for educational services to handicapped students due to two major external social forces: (a) legislative mandates and (b) judicial litigation. As the legislative culmination of these social forces, P.L. 94-142 represents a major new external influence that will interact with public school organizations. Decision-making relative to compliance with the Act may necessitate changing or modifying the organizational operation of both general and special education, as well as changing or modifying organizational structure. Because of its central role in this external influence, individualized education programs will precipitate decision-making on the part of school personnel. These organizational dimensions are schematically presented in Figure 8.

FIGURE 8

Organizational Dimensions



In general, changes in decision-making relative to planning, programming, and evaluating IEP's will involve:

- more formal procedures,
- require more participation by a variety of professional and lay individuals,
- a prescribed judicial process to adjudicate conflicting interests,
- necessitate a more thorough analysis of student characteristics,
- necessitate a more thorough analysis of organizational needs, especially in regard to professional preparation and training, and
- necessitate a more thorough analysis of fiscal, personnel, and material resources.

An examination of each of these changes in decision-making relative to changing or modifying organizational operation and structure is appropriate.

More formal procedures. More formal procedures for decision-making will result because of: (a) the degree of data specificity required by both the state annual plans and the local educational agency applications, (b) the procedural safeguards required for adjudicating questions of due process and the least restrictive alternative doctrine, and (c) the degree of data specificity required for the development of individualized education programs. Organizational operation may be changed or modified by:

- requiring clarification of professional roles and responsibilities concerning planning, programming, and evaluating,
- restrict the parameters of decision-making, policy formulation, and rule-making within more formalized *judicial* boundaries, and
- necessitate more professional accountability in terms of the quantity and quality of services delivered.

Organizational structure may be changed or modified by:

- requiring clarification of functional positions within the general and special education hierarchy,
- restrict the parameters of decision-making within more formalized hierarchical levels, and
- necessitate more accountability in terms of functional positions, regardless of individual professional performance.

Require more participation. More participation on the part of general and special education administrative, instructional, and support personnel will result because of: (a) requirements for parental involvement in the development of the IEP, (b) the requirements for interdisciplinary staffing by members of the placement committee, and (c) the requirement that individualized education programs be monitored/evaluated by the state educational agency and U.S. Commissioner's Office. Organizational operation may be changed or modified by:

- requiring a more participatory approach to decision-making, policy formulation, and rule-making,
- developing more flexible means for actively opening up opportunities for participatory decision-making, and
- requiring school personnel to publicly declare and clarify various modes of decision-making.

Organizational structure may be changed or modified by:

- more public accessibility to personnel involved in developing and implementing the individualized education programs, and

- diminishing or expanding decision-making influence of various functional professional positions.

Prescribed judicial process. The impact of procedural due process on administrative policy formulation and rule-making was discussed in Chapter IV.

Analysis of student characteristics. A more thorough and comprehensive analysis of student cognitive, affective, and psychomotor characteristics will result because of: (a) the degree of data specificity required for the development of individualized education programs, (b) the degree of data specificity necessary for procedural due process adjudication, and (c) the requirement that individualized education programs be monitored/evaluated by the state educational agency and the U.S. Commissioner's Office. Organizational operation may be changed or modified by:

- the allocation of more professional time and material resources to the assessment and placement components of the full service delivery system,
- more professional involvement in developing more precise assessment and evaluation tests and instruments,
- more professional involvement in developing conceptual strategies for "translating" test results to specific instructional activities,
- affecting professional and parental perceptions, beliefs, attitudes, and values concerning handicapped individuals, and
- requiring more thorough examination of professional competencies relative to administrative, instructional and supportive personnel.

Organizational structure may be changed or modified by:

- contracting or expanding upon the fiscal, personnel, and material parameters of organizational programs or projects;
- necessitate new formal/informal relations between various programs, projects, or administrative departments.

Analysis of organizational needs. A more thorough and comprehensive analysis of organizational needs will result because of: (a) providing for a free appropriate public education for all handicapped children will necessitate fiscal and material expenditures, as well as consuming professional time, and (b) compliance requirements by the State educational agency and U.S. Commissioner's Office. Organizational operation may be changed or modified by:

- requiring more detailed and comprehensive information be delineated in needs assessment processes, and
- requiring more systematic planning, programming, and evaluating of all educational programs in a district or state, as opposed to merely analyzing the organizational needs of special education programs.

Organizational structure may be changed or modified by:

- contrasting or expanding functional positions due to results of needs assessment, and
- redistribute decision-making authority within the general and special education hierarchy to meet perceived deficiencies.

Analysis of organizational resources. A more thorough and comprehensive analysis of organizational resources will result because of: (a) the degree of data specificity required for the development of individualized education programs, and (b) degree of data specificity required for the local educational agency's annual application for Federal funding. This activity is integrally incorporated into all of the above activities.

In summary, the IEP can be conceptualized as a management tool for planning, programming, and evaluating of special education and related services relative to organizational decision-making, operation, and structure. In general, this management tool will involve: (a) more formal procedures for planning, programming, and evaluating, (b) require more participation by a variety of professional and lay individuals, (c) a prescribed judicial process to adjudicate conflicting interests, and (d) necessitate more thorough and comprehensive analysis of student characteristics, organizational needs, and organizational resources.

The philosophical move toward a functional analysis of the behavioral patterns and unique learning environments and resources necessary for individualizing the educational and therapeutic programs for handicapped children, as well as the move to educate handicapped children in the mainstream of society, requires a management tool capable of affecting organizational change in decision-making, operation, and structure. The individualized education program can be such a tool.

Chapter VI

Personnel Development

In 1974, prior to the passage of P.L. 94-142, Herman Saettler of BEH stated, "One of the Bureau's goals is the development of a nationwide commitment to insure that every handicapped child . . . is receiving an appropriately designed education . . . There are a great many elements necessary to the realization of that goal, but none more important than the development and improvement of professional personnel in sufficient numbers and with appropriate *competencies* (emphasis added) to fulfill that goal."[1] This goal has been incorporated into P.L. 94-142 in Section 613(a)(3) which states:

> Each state plan shall . . .
> "(3) set forth, consistent with the purposes of this Act, a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special education instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects; and (B) adopting, where appropriate, promising educational practices and materials development, through such projects;

Reviewing the above Section, it is evident that: (a) a major emphasis involves inservice education as opposed to preservice education, (b) the thrust of this inservice training should be to meet the needs of all instructional personnel (not only special education), and (c) that the state is responsible for planning and implementing this comprehensive system of personnel development. Speaking to this section of the Act, Richard Schofer, Chairman, Department of Special Education, University of Missouri, stated ". . . the personnel development sections of the Act are the basic founda-

tions . . . of the law itself . . . because without well trained, well qualified personnel, the individual states will never be able to give adequate full and comprehensive service for all of their handicapped children."2

Paragraphs 121a.280 to 121a.287 set out the regulations implementing the statutory requirements of Section 613(a)(3). Among the more salient features of these regulations are those provisions pertaining to inservice training functions, a definition of "appropriately and adequately prepared and trained, and a provision for technical assistance to local educational agencies." The regulations state, "the state educational agency (must insure that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children . . ." The need for ongoing inservice training programs becomes apparent when one realizes that most of the public school personnel affected by the Act have received little, if any, training relative to educating handicapped children. A partial list of groups, within a local educational agency, that will probably require some additional training includes:

(1) regular education teachers,
(2) school psychologists,
(3) speech and language pathologists,
(4) physical education teachers,
(5) medical and health personnel,
(6) school social workers,
(7) special education teachers, and
(8) school administrators.

The groups requiring inservice within a local educational agency will vary greatly between districts. However, one group that all districts should give consideration is parents. Parents, or parent groups, may not need inservice training in the conventional sense, but should be (a) made aware of parental participation provisions in the Act, (b) be informed about the individualized education program process and their possible role, (c) be informed about the positive and negative aspects of an education in the least restrictive environment, and (d) be made aware of the problems the local educational agency will confront as it strives to meet federal and state mandates.

The regulations stipulate that to be "appropriately and adequately prepared and trained," instructional personnel must be certified under the state's standards. This certification, registration, or licensing, procedure includes:

- all special education personnel,
- all regular education personnel who serve children, and
- all support personnel who provide direct services to handicapped children, including therapeutic recreation personnel, occupational therapists, itinerant resource personnel, physical therapists, diagnosticians, psychologists, counselors and aides.

The regulations also specify that all aforementioned personnel need to be involved in training activities designed to develop those skills and attitudes necessary to educate handicapped children. One means, and probably the most effective and efficient, to prepare personnel is via an inservice education model, a model that would take into account the needs of individual local educational agencies.

The regulations do provide for the "use of incentives which (will) insure participation by teachers" in these inservice training projects. Some of these incentives may be:

- released time,
- payment for participation,
- options for academic credit,
- salary step credit,
- certification renewal, and
- updating professional skills.

Furthermore, the state is required to give technical assistance to local educational agencies in their implementation of the state's comprehensive system of personnel development.

The remaining portion of this chapter is devoted to:

- a discussion of a planning process which will allow the local educational agency to identify and prioritize groups that will require inservice training, and
- a delineation of some of the possible competencies which will be needed by local personnel to implement the free appropriate public education.

As the local educational agency undertakes to implement the state's plan for personnel development, it must have a clear understanding of what are the expected outcomes. In this case, the global outcome (goal), a free appropriate public education for all handicapped children, is not in itself operational. However, the components necessary to operationalize the concept of a free appropriate public education have been discussed, at length, in Chapters I through V. One of the major sub-systems of this goal is a comprehensive plan to develop adequately prepared and trained personnel. In order to achieve the "appropriate," in free appropriate public education, every local educational agency must have the proper number of staff with the proper competencies. The issue then becomes, how does the local agency identify staff requirements and the necessary competencies. One method of accomplishing this task is to conduct a comprehensive needs assessment. While it is beyond the scope of this handbook to delineate "how to" conduct a needs assessment, some possible strategies are discussed.

English and Kaufman suggest that a "fundamental hypothesis of needs assessment [is knowing] what is to be accomplished, why it should be accomplished, to what extent it should be accomplished, and with who it should be accomplished."[3] While all of these points are important, in relation to teacher competencies, the latter two points of "to what extent and with whom," are the more critical. An important aspect of any inservice training program conducted by local educational agencies is to train the right people! While it may not be necessary to make a physical education teacher aware of some special needs of a handicapped child with severely impaired language, it may be critical to inform a music teacher of this handicap. Instructional personnel who receive inservice training will be determined by an assessment of the needs of the handicapped children, parents, and community of the local educational agency. To what extent they receive that inservice training will be determined by the state and local educational agency.[4]

It should be clear that one cannot conduct a needs assessment regarding competencies of instructional personnel without first conducting an assessment of the children and parents who will require service.[5] (Parents are included because if they have the right to assist in the development of their child's educational program, then the local educational agency should inform parents of their responsibilities in developing an individualized educational program.) In conducting an assessment of the population to be served, a number of important questions must be discussed. These questions include:

- defining the goals of a particular program (e.g., goals for emotionally impaired children will undoubtedly differ from goals for educable retarded children),
- analyzing the skills (competencies) the children will need to attain the prescribed goals,
- delineating those instructional processes that appear to be best suited to help children attain the necessary competencies,
- determining what materials (technology) will best facilitate the instructional process, and
- identifying environment, classroom or otherwise, that afford children the opportunity to: (a) attain these goals and competencies, (b) take part in the instructional process, and (c) use the available technology in the least restrictive environment.

This list is by no means complete. However, it is evident that if children are to achieve a particular set of competencies in order to attain prescribed goals, then local educational agency personnel must have a battery of skills (competencies) to facilitate that development. What competencies will be necessary to accomplish the goals? The literature in education, regular or special, offers no particular answer to selecting specific com-

petencies necessary for instructional personnel to be "successful" in the teaching endeavor.[6] In fact, a criticism of the competency based approach is that educators do not agree on which competencies are valid for specific learning situations and environments.[7] However, P.L. 94-142 does give some direction to training areas that need to be addressed. These areas include:

- development of skills that allow instructional personnel to implement individualized educational programs,
- training instructional personnel to be assessors of a child's present level of functioning,
- general training in the development of interpersonal communication skills to allow more effective interaction with parents of handicapped children,
- assisting instructional personnel develop specific management strategies to handle inappropriate behaviors,
- training instructional personnel to use daily record-keeping and data collection activities for evaluation purposes,
- training instructional personnel in procedures for using a comprehensive data base for educational planning,
- developing programs which will increase certified instructional personnel awareness of "how to" work with aides, and
- developing training programs to help local educational agency personnel gain a better understanding of P.L. 94-142.

The key to acquiring these competencies and improving services rests in assuring the development of effective inservice training programs to meet the needs of the instructional personnel who are charged with providing an appropriate education to all handicapped children. As Jasper Harvey states,

> From any point of view, P.L. 94-142 is remarkable for the great new opportunities it brings to education. This is particularly true with personnel preparation. The law places great emphasis on this aspect of education of the handicapped, and thereby places great faith in the school personnel who will be involved. DPP is asked to provide the most able, competent, and highly trained personnel that special education has ever known. In doing so, educational opportunities will be improved not only for handicapped children but for all children.[8]

Chapter VII

A Look Into the Future

The U.S. Department of Health, Education, and Welfare "sees the development of regulations for implementing P.L. 94-142 as being an evolutionary process which will continue over a period of several years. The actual impact and consequences of the statutory provisions and problems which states and local educational agencies may have in implementing these provisions are not known at this time." Also, what the future holds for the general development of special education as a professional discipline, and what impact P.L. 94-142 will have on shaping this future, are not clearly discernable. However, the authors believe one basic assumption is appropriate — if successfully implemented, P.L. 94-142 will mark the beginning of a new era for all children, not just handicapped children. By focusing on a number of educational concerns that heretofore have been sorely neglected, four basic issue areas will require future inquiry relative to the administrative process in terms of the implications of changing general and special education organizational decision-making, operation, and structure. These issue areas are: (a) the individualized education program, (b) the least restrictive environment, (c) procedural due process safeguards, and (d) personnel development.

One of the most critical aspects of the Act is the development of an individualized education program (IEP) for every handicapped child. The next few years should bring about a refinement of that process in terms of: (a) the local educational agency's ability to gather and use assessment data to help plan the IEP, (b) a clearer delineation of the functional characteristics of an IEP, and (c) an increased awareness of how to involve parents in the instructional phase of the IEP. Finally, in five to ten years, educators should begin to have accumulated sufficient data upon which to base a judgment relative to the success or failure of the IEP as a management tool for planning, programming, and evaluating of special education and related services (a) provided to individual handicapped children, and (b) relative to organizational administrative decision-making, operation, and structure.

The Act provides for an education in the least restrictive environment, an environment that affords handicapped individuals an opportunity to become involved in the socialization processes of their normal peers. The movement to educate the handicapped in the least restrictive environment will continue, but some critical questions need to be addressed. Some of these questions are:

- Will the amount of teacher time a handicapped child requires be detrimental to other children in that environment?
- Will the rights of the non-handicapped child be violated?
- Does placement in the least restrictive environment contribute to increased academic performance?, and
- Does placement in the least restrictive environment contribute to increased socialization skills for the handicapped?

P.L. 94-142 contains extensive due process guarantees. In the coming years, these procedures will probably increase in specificity, partly due to pressure from advocacy groups and partly because of needed clarification concerning specific implementation rules and policies.

P.L. 94-142 also requires that public school personnel be "appropriately and adequately prepared and trained" to provide and supervise the education of handicapped children. Demands upon preservice and inservice training programs will increase, as well the demands for more effective procedures for acquiring and disseminating of information derived from educationai research, demonstration, educational programs and projects.

In conclusion, it is readily evident that public schools will be forced to expand their services to handicapped children. However, other segments of our society, both public and private, must change to accommodate the handicapped. Those handicapped individuals provided a free appropriate public education in a nonrestrictive environment will no longer be content being second class citizens. They *will* demand post secondary training program, good jobs, adequate housing, and all the other amenities that we have come to expect.

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2. Roy Littlejohn Associates. *Conference summary of Public Law 94-142.* USOE, Bureau of Education for the Handicapped. Grant No. 300-76-0328, Washington, D.C., 1976, p. 55.

3. English, F.W. and Kaufman, R.A. *Needs assessment: a guide to improve school district management.* Arlington, Virginia: American Association of School Administrators, 1976, p. 16.

4. For a discussion of the essentials of conducting a needs assessment see English and Kaufman, 1976 (footnote 3).

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